United States Court of Appeals

for the Second Circuit

APPENDIX

75-1197

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—against—

NORMAN RUBINSON, EDGAR REYNOLDS,
WILLIAM CHESTER, LAWRENCE LEVINE,

Defendants-Appellants.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

Vol. V—Pages 1,432a to 1,805a

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TABLE OF CONTENTS

	Page
Docket Entries	1a
Indictment	13a
Motion of William K. Chester to Appoint A Defense Attorney to Represent Him At the Jury Trial.	26a
Bill of Particulars.	29a
Supplemental Bill of Particulars	34a
Transcript of Hearing Dated June 17, 1974.	35a
Transcript of Hearing Dated June 27, 1974.	42a
Transcript of Hearing Dated December 5-6, 1974	54a
Transcript of Hearing Dated December 20, 1974.	108a
Rubinson--Direct	113a
Preliminary Matters (1/22/75).	127a
Trial Transcript	
Preliminary Matters.	140a
Government's Opening	157a
Schucalter--Direct	212a
Altschuler--Direct	220a
Sklar--Direct.	222a
Sklar--Cross	226a
Nordin--Direct	235a

	Page
Nordin--Cross.	290a
Nordin--Redirect	321a
Colloquy	366a
Nordin--Redirect	379a
Weitzman--Direct	380a
Weitzman--Cross.	467a
Stern--Cross	549a
Hochen--Direct	561a
Hochen--Cross.	579a
Hochen--Recross.	641a
Stack--Direct.	642a
Stack--Cross	677a
White--Direct.	681a
White--Cross	693a
White--Redirect.	696a
Torelli--Cross	703a
Stein--Direct.	725a
Stein--Cross	824a
Robing Room Conference Re: Jerome Haskell's Communication with a Juror . . .	995a
Stein--Redirect.	1018a
Stein--Recross	1064a
Stein--Redirect.	1068a

	Page
Vogelson--Cross.	1081a
Abt--Direct.	1084a
Abt--Cross	1089a
Steinberg--Cross	1091a
Mark--Direct	1092a
Mark--Cross.	1104a
Ochart--Cross.	1119a
Weiss--Direct.	1126a
Kaye--Direct	1132a
Kaye--Cross.	1140a
Kaye--Recross.	1197a
Stillman--Direct	1209a
Stillman--Cross.	1219a
Benenson--Direct	1236a
Nelson--Cross.	1238a
Nelson--Recross.	1286a
Count 20 Dismissed	1288a
Government's Closing	1289a
Rubinson Summation	1432a
Andrews Summation.	1457a
Government's Rebuttal Summation.	1549a
Jury Instructions.	1600a

	Page
Exceptions to Jury Instructions.	1721a
Supplemental Jury Instructions	1748a
Colloquy During Jury Deliberation.	1752a
Defendants Wax and Levine's Requests to Charge.	1887a
Requested Additional Instructions.	1913a
Kaye's Judgment.	1915a
Stein's Judgment	1916a
Defendant Rubinson's Exhibit A	1917a
Defendant Rubinson's Exhibit B	1919a
Defendant Rubinson's Exhibit F	1920a
Defendants Wax and Levine's Exhibit A.	1921a
Defendants Wax and Levine's Exhibit J.	1923a
Defendant Chester's Exhibit G.	1926a
Transcript of Rubinson's Sentence.	1929a
Defendant Rubinson's Judgment.	1964a
Defendant Rubinson's Notice of Appeal.	1965a
Transcript of Hearing Re: Rubinson's Application for Bail Pending Appeal May 16, 1975	1966a
Defendant Levine's Judgment.	2030a
Defendant Levine's Notice of Appeal.	2031a
Defendant Kaye's Amended Judgment.	2032a

	Page
Honorable Constance B. Motley's Opinion dated July 28, 1975 as amended September 22, 1975.	2033a
Rubinson's Financial Affidavit (Not Submitted to Court)	2067a
Documents Defendant Rubinson Attempted to Offer into Evidence.	2068a
Letter dated June 15, 1968 Entitled Notice of Declaration of Stock Dividend.	2068a
Notice to Stockholders dated November 27, 1968	2069a
Notice of Special Meeting of Stockholders.	2070a
Letter from SEC to Marc A. White, Esq..	2071a
Letter from Germaise Cooper & Quinn to Board of Directors of Allen Capital Corp.	2072a
Letter dated August 28, 1968 from Irwin L. Germaise to Board of Directors, Calculator--Computer Leasing Corp.	2101a
Letter dated July 18, 1968 from Skadden Arps to Dr. Sidney Estridge	2113a
Notice of Declaration of Stock Dividend.	2115a
Transcript of Hearing on Motion to Amend Court's Opinion -- September 22, 1975.	2116a
Copy of endorsed order.	2136a
Copy of page 19 of Opinion, as amended and initialed by Hon. Constance Baker Motley.	2137a

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THE COURT: Mr. Rubinson, are you ready to proceed?

MR. RUBINSON: Yes, Ma'am.

Ladies and gentlemen of the jury, your Honor, it is very hard for me now to follow Mr. Robson. I think he did almost a full summation, but I am going to add a few

little things that won't take too long, and if it sounds like I am reading it, that is what I am doing, because it is very hard for me to do it any other way.

First I want to thank you for your kind attention during these weeks of trial.

I know it has been very hard on you trying to listen to every word of testimony and evaluating the testimony, studying the witnesses the Government brought and studying their motives for testifying, looking at their expressions when they testified and at the same time studying myself and the other defendants to see whether or not you can detect something in our faces.

* * *

If my behavior in court was objectionable to you, I apologize. It wasn't meant to be. Not being an attorney, trying to defend myself, just having a high school education, and not knowing proper court procedures. But when you are on trial for your very life and existence it becomes a very heavy weight not only on you but your wife, your children, your grandchildren, and everybody else around you.

What is ordinary in the way of life becomes a capital decision on your parts, as Mr. Robson told you, so I won't go into that whole thing as to beyond a reasonable doubt. Mr. Robson did all of that.

Now, on with the case. The first witness was a Charles Pardee, if you remember. That was on January 24th. That's a long, long time ago. Don't forget we are sitting here now two months. That's as much time as Sidney Stein stayed in jail for 250 crimes. We are sitting here the same time.

He was the SEC expert, and if you remember he just briefly said that in his whole career only one spinoff was registered.

Then we come to Philips Moore, who testified to Mr. Chester's credibility and said he is a fine, upstanding man, and that he did sell Mr. Chester the land but it was he who couldn't produce the clear title on the land.

Then we come to Sten Nordin on the 24th. I don't have to go into that. Even the government just said that he is not very intelligent and he is not very smart, and he will lie to anything you tell him -- or whatever.

But they took him off the stand and substituted Lena Dundish. She was a woman that was on her way to Florida, and if you remember she bought the stock to average out.

Then they put on a Mr. Schuchalter, who was just a customer and bought a lot of other stocks. And the same with Mr. Altschuler and Mr. Sklar and Mr. Warren. And then a Mr. Salvie.

Then they brought a woman with her children and her mother and her mother-in-law, Rochelle Malek. If you remember her, she said she bought two or three hundred shares, she didn't know why she bought it or how she bought it. But she knew why and how she bought it, because her husband was the mayor of Miami Beach, and Sidney Stein donated to his campaign, and Sidney Stein put him in twenty-five stocks. She doesn't know me very well at all.

She mentioned she played mah jong with my wife. My wife is sitting here. She doesn't play mah jong. She doesn't know how to play. Not that there is anything wrong with it. But they reached out all over the world to put me

in this case.

I am going to come to how I came to get involved in this case, and when I say "this case" there is nothing wrong with "this case," and I am going to prove it to you.

And then we come to Mr. Weitzman, who by Sidney Stein's admission and his admission he had a gun and he wanted to kill him. Sidney Stein robbed $140,000 from him. This is one of the crimes that is in evidence of Sidney Stein's crimes, that he robbed $140,000 from Mr. Weitzman.

Mr. Weitzman always thought in his own mind that I had something to do with it. I had nothing to do with that. Only by association. I am going to come to that association.

By the way, Mr. Weitzman said he was my nominee. If you remember they went through Exhibit 27, a whole elaborate thing. Mr. Wohl said you don't see my name anywhere. It is true my name isn't anywhere. I never owned any stock, I never sold any stock in Stern Haskell.

They went into Saul Weitzman as my nominee. He asked Hochen specifically if it's all right to be a nominee. You heard Hochen testify here he doesn't believe in nominees, he was never my nominee, and if Weitzman would have asked him he would have told him not to be a nominee.

Not that there is anything wrong with it, but

I'm just trying to put together these lies for you that they have.

I have here a letter that was put into evidence that I will get to later about Mr. Hochen, that he did sell spinoff stock and he knew it and he got a letter from his attorney, a law firm by the name of Truitt & Watkins, as far back as 1968. So this was all about the same time.

Then we come to a Mr. Bosh Stack or Stock, some public relations man on a company called Mobil Homes that never happened.

Then we come to an attorney called Mark White, who was up here testifying, and he seemed to know what he is talking about. But we couldn't get a few things into evidence, such as a letter from Mark White to me at that same time telling me that liquidating dividends are exempt. And also he went as far as to go to the SEC and get a letter for me to say that they are exempt.

Now, I don't know what his double face and double dealing is. Maybe he's got a government problem, too. But I got this letter right here from John Heneghan, which is the assistant chief counsel --

MR. WOHL: May we approach the bench, your Honor?

THE COURT: All right.

MR. RUBINSON: What's going on?

THE COURT: Approach the bench, Mr. Rubinson.

(At the side bar:)

MR. WOHL: Your Honor, these documents Mr. Rubinson is reading from, none of them are in evidence.

THE COURT: Is that right?

MR. RUBINSON: I didn't read that document yet.

MR. WOHL: He said he had a letter from Mr. Heneghan of the SEC. That letter is not in evidence.

MR. RUBINSON: I couldn't get it in.

MR. WOHL: He said he had a letter from Truitt & Watkins.

MR. RUBINSON: There it is. This is in evidence.

MR. WOHL: It is for identification, and Mr. Rubinson knows that.

MR. RUBINSON: I do not know that. I kept this in my evidence file with my exhibits, and so is this one.

THE COURT: Were they offered in evidence?

MR. RUBINSON: Of course.

THE COURT: Were they received in evidence?

MR. RUBINSON: I am sure they were.

MR. WOHL: They weren't. They relate to other transactions, and it is obvious that the only way they could have got into evidence is if Mr. Rubinson had gotten on the

md 6

witness stand and testified tothem.

THE COURT: They are not marked in evidence, Mr. Rubinson.

MR. RUBINSON: I don't know what that means, but this was gotten in through Larry Hochen, who sent it to me.

THE COURT: Just a moment. I will check it.

(Pause.)

THE COURT: The clerk doesn't have them marked in evidence. Are these the documents?

MR. RUBINSON: Yes, ma'am.

THE COURT: They are not marked in, are they?

THE CLERK: No. I usually put a double red line across the "id," your Honor.

MR. RUBINSON: They should have been then, because I questioned Mr. Hochen on this right on the stand, and Mr. Hochen identified this letter, and they were let in, because this happens to be very important as to the state of mind of this whole case.

THE COURT: At the time I seem to recall they were not admitted because it had to do with other corporations and not with Stern Haskell.

You can't now bring in evidence. The evidence is in. What you have to talk about, Mr. Rubinson, is the

evidence already in, not something that isn't in.

For example, you just told the jury about the husband of a witness from Florida, about her husband being the mayor.

MR. RUBINSON: He was.

THECOURT: And that Sidney Stein contributed money to him.

MR. RUBINSON: Yes.

THE COURT: Was that brought out on the trial?

MR. RUBINSON: I am sure I asked her that question. I meant to ask it, if I didn't. That's my inexperience.

THE COURT: That's the problem.

MR. RUBINSON: I know I have been trying my best for a few weeks.

THE COURT: You can understand what I am telling you?

MR. RUBINSON: Yes.

THE COURT: You are to comment now on what is in evidence. You are not to bring in now things that are not in evidence and tell the jury about all kinds of things that you happen to know personally but were not testified to here.

Do you understand that? You can't do that.

MR. RUBINSON: I understand what you are saying, your Honor, but of course the whole problem is I need a little leeway because I don't have the experience.

THE COURT: You don't need leeway on that. There is plenty of evidence already in the record you can talk about.

MR. RUBINSON: I don't know how to marshal that evidence.

THE COURT: You do the best you can, because that's what you are up here for. I can't permit you to violate the rules and then tell the government they have to abide by the rules;do you understand that?

MR. RUBINSON: Yes, ma'am.

(In open court. Jury present:)

MR. RUBINSON: Ladies and gentlemen, if you remember Mr. Wohl said that you have to be thorougly convinced as to our intent to defraud the public. I am just going to give it to you quickly what happened and the sequence it happened so it can be understood.

You have heard the testimony about a meeting at Blank Furniture where I and others were present. Let's analyze that part of the meeting. No. 1, Mr. Chester, a former attorney for some of my companies, asked me if I knew a good company he could talk to about a business proposition.

No. 2, I mentioned it to Mr. Stein, who I traveled with, but I was not in business with him, on his own testimony, in the 250 crimes. He in ted me into deals, and I didn't know whether they were crimes or not, but I didn't go into any deals. But I traveled with him because I was looking for a business proposition in New York.

No. 3, I introduced Jerome Haskell to Mr. Chester after Mr. Stein introduced Jerome Haskell to me.

No. 4, Mr. Chester spoke to Mr. Haskell.

No. 5, they drew an agreement which an attorney, Leo Silver, drew. And you heard Mr. Robson say that before, that there was another attorney there, and that's an agreement that Leo Silver drew.

They discussed the legality of this particular spinoff. Mr. Chester suggested they see Irwin Germaise, an attorney, a highly experienced ne, to ask his advice. It is true he did legal work for me, too. Mr. Chester was my house counsel. He knew Mr. Germaise, also.

No. 8, Mr. Haskell asked me to take him and Mr. Richard Stern, his partner, to see Mr. Germaise, the attorney. I took them to see Mr. Germaise, the attorney, Richard Stern and Jerry Haskell.

You heard Mr. Stern testify that I wouldn't put my hand in my pocket for the $1500. I didn't have to put my

hand in my pocket because there is an agrrement in evidence that he had with Mr. Chester, and you ask for Government 106, a government exhibit. That's the agreement that they had to spend $7500 in expenses. How they spent it was not my business, but that agreement is in evidence.

That's 106. Also in evidence is 108, which is a letter from Germaise to Stern Haskell for which they paid $1500. Whether or not Mr. Haskell took the diligence, or had the knowhow to understand Germaise's letter, but Germaise did tellhim it was legal. You heard that from Mr. Richard Stern, a government witness here.

So so far, ladies and gentlemen, there is nothing illegal, hidden or sinister that took place. Everything was out in the open.

At that meeting you heard Weitzman say he was my nominee. Hochen said he was not my nominee, and he would tell Weitzman not to be anybody's nominee.

Of course Weitzman has an ax to grind with me. It is in evidence out of his own mouth he loaned $25,000 to two friends of mine that didn't pay it back. I had to pay him back. That's $25,000 he wants an excuse not to pay me.

After Germaise's meeting, you remember that fifteen-page opinion letter that we all went to sleep when Mrs. Harris read it. In substance, that was the conspiracy.

That is a conspiracy? Who can understand that letter? Does anybody on the jury understand it? Raise your hands if you do, because I don't understand it, because I spun off four other companies on letters like that before and the government says they are all right, so what's wrong with that one? We didn't do anything wilfully.

Now, to Mr. Stein. I am just going over it quickly. He testified I brought this black bag of certificates to New York. Nordin says he brought it. No, I brought it. I brought it for Stein. He called down there and he told him to get the certificates ready, Rubinson is coming to New York, ask him to carry it up.

I said why not? He's a friend. I don't know what's in the bag. I carried clothes for him. I lived in his house, I didn't pay any rent, so I could do him a favor.

So now you know how the certificates got to New York. That's how they got there. They were Stein's certificates. Nobody knew about it. I didn't even know what was in the bag.

Now, you heard one of the witnesses get up there and I came with Feiffer and dumped the certificates on the table. Nordin said he dumped the certificates when I took the hundred dollars out of my left pocket. They both don't

know what they are talking about. I brought the certificates there for Mr. Stein. He said, "You are going downtown; -bring the valise downtown."

I brought it and left it there. I ddin't take and dump out certificates. That's how they got there. Nordin couldn't follow the government's suggestion; he is too stupid, he got it all mixed up. But Stein knew what he was doing.

While he was doing this he was doing 200 other crimes. He needed meseenger boys. That's what I became. If he would have told me I was a messenger boy I would have taken the valise and stuck his head in the valise, but he never told me I was a messenger boy. He used me like he used everybody here.

He used me when he got off the plane in the so-called suicide. He used me to get him the psychiatrist. He used me all the way through. He took me on the first meeting to narcotics agents and when I saw what he was doing I said,"Forget about it."

THE COURT: Just a minute, Mr. Rubinson.

I will have to remind the jury that statements made by lawyers and defendants representing themselves are not evidence. What you are doing now is bringing to the attention of the jury facts which you allege but which are

not in evidence.

Will you please refrain from doing that, and comment only on what is in evidence? Will you do that, Mr. Rubinson?

MR. RUBINSON: Yes, ma'am.

THE COURT: Don't bring in a lot of alleged facts which we haven't heard from any witness on the witness stand.

MR.RUBINSON: But they could infer in their own mind that what I am saying is right.

THE COURT: You are asserting facts now. Nobody has testified to them. So please don't do that again.

MR. RUBINSON: I won't do it, but I thought the government made inferences that the jury could infer. I would like the jury to see the right story, not the wrong story.

Well, Mr. Stein did say we traveled to New York, and I lived in his apartment, so I am allowed to say that.

Now I am allowed to say that I didn't have any business with him because he said that. But that week he decided to stay in New York, and that's how the stock got to New York. That was his bag, and not mine.

Now, the government brought up two star witnesees, a trader called Gerald Mark -- I didn't know what to ask him, and I said, "Do you know me?" He said, "No." "Did you see

me in Lockwood?"

He said, "no."

If I was hanging around Lockwood, and I got my telephone calls there, he would see me, he would know me. Everybody else that knew me seemed to know me after they were pointed out.

James Ochart, the bookkeeper and backroom man on the 22nd floor, where the alleged certificates were supposed to be, stamped up by this Mr. Malmeth, whoisn't here, by the way, either, he never saw me before or knew me. Nobody knows me.

Do you know who knows me? Weitzman, Stein, and now -- I forgot about Mr. Kaye. That Stein said that he gave Kay the money to bring to Lockwood. Now they had to put Rubinson in it, so Stein took the money, showed it to Kaye -- that's Kaye's testimony, not Stein's -- brought it upstairs, I blessed it, and then they took it. Right? So that's what they said -- I touched the money.

What money did I touch? The money that was between themselves. That's the only testimony you heard that makes any sense, one crook to the other up and back. That's what you heard and that's where the story lays.

Just bear with me a little bit here. Mr. Robson, he stole my whole thunder.

At the beginning of the case you heard about the Stein-Feiffer-Rubinson trio, the Golddust Twins. Nobody could tell us apart. Now all of a sudden Stein puts me in a car, himself upstairs, Feiffer somewhere else. Everybody is apart. And they even put in a Harry Silber, a big stockholder. If you notice Exhibit 27, he had 18,000 shares. We know he is alive. Mr. Wohl said he spoke to him.

Why didn't he bring him here?

Now, we are accused here of not telling the public in an offering, in a spinoff, about pertinent facts. I accuse him of not giving you all ther pertinent facts. If he would have brought Mr. Silber here you would have it. Here he is right up there on No. 27, big as life.

Remember that one very interesting thing that might keep you awake while you are going through this, that Government Exhibit 497, Stein's psychiatric report, how he manipuoates people, how he takes advantage of people, how he uses them.

Mr. Robson put it right; He would sell his mother down the river. He would sell anybody he could. He said that. He said he would do anything to stay out of jail.

Now, for a minute let's examine the 50,000 shares for Michael Gardner. The testimony by Nordin says that I called to alert him to the 50,000 shares for Michael

Gardner.

I didn't call him. I called Mr. Chester. He answered the phone. Mr. Haskell made a perfectly normal business arrangement to give 50,000 shares of stock to Michael Gardner. There is in evidence such an investment letter, but the government never told you that investment stock does not have to be stamped, there is no law that says it has to be stamped. They infer by somebody it is a normal practice. It is a normal practice not to cross the street when it says "Don't Walk," but everybody walks. It is not the law. We are tried here on the law, not what is a normal practice.

There was a woman that sat here who told you finally, after Mr. Chester tried to get the fellow that seeps the floor to say that spinoffs are legal, and she spit it out and she said spinoffs were legal, and she brought it to their attention. So what are we doing here? Why did everybody have to come from out of town and suffer two months in this court, like yourselves, and Stein didn't even do two months in jail.

If you want justice, you let us go and put him where he belongs. That's justice. Don't let that man ruin a hundred families. There's eight sitting here, and off that eight comes a hundred. Don't let it be on your conscience

to put us eight in jail, or any one of us eight, and let that man and Mr. Kaye walk around.

That's all I can say about the 50,000 shares. It was a perfectly legitimate transaction. I can't defend Mr. Gardner, I am not his lawyer, but if Mr. LaLone, who is very experienced, didn't investigate and take the due diligence that is required in the financial community then he should bear the burden, if there is such a burden.

Mr. Wohl in his summation did not say that spinoffs were illegal because they are not even illegal today. He said the method that it was done may be illegal. It is up to you to decide whether it is illegal.

The whole thing in a spinoff all bears around the good faith in a spinoff. They keep saying National Ventures didn't have anything. I didn't know National Ventures from a hole in the ground. But if they didn't have anything it wasn't necessary for them to have anything, because what they did with the Stern Haskell stock was give it to the stockholders.

National Ventures didn't get any money from this, or benefit. A company doesn't have to have anything to spin off another company.

Have you stopped to think, here are stockholders sitting with Toy King, Kel's Five and Ten originally,

sitting with worthless paper, worthless stock, over a period of twelve years, and Mr. Chester took this company and spun it out to the stockholders. They had a good piece of paper. He didn't defraud the public. He made the public healthy.

I am not going to go through all thirty-five, because there are only five out of the thirty-five that even know me. Disner, they made a big deal in Diston Industries. A fellow that, I haven't got the book here, but it's this thick, testified since November 1969 before the SEC, before all kinds of boards, before everybody, they bring him up here and he goes like this -- "Mr. Rubinson, yes, he wanted to give me a quarter a share, da ra, da ra, da ra, dar." Then, boom, off the stand.

I came up here. They chased me.

Do you know why he came to me, this man? Because he stole everybody's money. They wouldn't let me bring it out. I tried to bring it out. And he came to me for a loan. I chased him. He never chased me.

Why didn't they let us go into the whole thing? S- by their admission I accuse him of railroading. This man, I accuse him, because every time they wouldn't let me, who I am not a lawyer, get down to the truth they chased me because I didn't know the proper court procedure.

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They they bring the Rabbi in. Sten Nordin said I owned a dress factory, Bnoth Jerusalem. Everybody said I owned it. The Rabbit didn't know me. He never saw me. He saw Stein.

We don'tthink the Rabbi lied. Let's analyze him. We don't think he lied. There are other people involved with the Rabbi which they could have brought in, but they knew that the Rabbi's mind was a little hazy so he couldn't be a hundred per cent positive. But where is the man that owns a public company by the name of Spitzer, and the other gentlemen who are supposed to be the benefactors of Bnoth Jerusalem? They would have stood up here and said, "Let them all go."

It's Stein, that is who belongs here, because Stein robbed them, too. That's one of his crimes. He took them into a deal with Mafia people that I brought out. This Fallon Smith deal he got them involved. That's what they would tell you. They wouldn't dare bring them.

They selected, but their selection wasn't so good.

Now they bring an accountant that he is a neighbor of mine, and he says Rubinson in one of his companiesthat I just tried to talk about, that they talked about, that owed this accountant $1500 that he got 500 shares from a lawyer

md 20

in payment of the debt. This lawyer's name is Frank Freeman. Weitzman gave him the stock, he testified. I gave him $1500, and he chose to lay off the stock on this accountant.

That's the story. They can't show that I ever had possession of one single share. They got over here 20,000 pages of paper. On one paper where is my name? So you know what he says? "He's too smart."

That's not true. When you are in a conspiracy you are in it, if there is a conspiracy. There is nobody too smart. There is no conspiracy here.

What do you see here? A normal business transaction. Right up here. Who have they got here? Dundish, Malek, Altschuler. All they brought. Where are the other stockholders that own the stock?

They brought a woman here on her way to Florida. She thought she was going to get paid here, that this was small claims court, that if everyone is convicted she was going to collect her $300. Why don't she go after IBM, people lost their fortunes, everybody else that went broke in the market? Nobody ever heard of Stern-Haskell in this courtroom. Who lost money in Stern-Haskell? They didn't show us one person who lost money.

You don't lose money until you sell the stock. So who lost money? Where was this big great American Swindle, where they have eight people tied up, sitting here for their lives, and we all talked to one another, because we respect one another? Nobody talks to Mr. Stein, because we know what he is. He put us here.

Mr. Kaye, he is just on Mr. Stein's tails. When Mr. Stein said something, he would have to go like this (indicating) because the stories have to be the same and they come before the same sentencing judge.

Now, Miss Sharifman got a little mixed up too. She said whenever they wanted to reach me, she would know where to call me. She never wanted to reach me, she wanted to reach Stein, it came out, when I cross examined her. She said if she wanted to leave a message there she would leave it with me. Sure I was there. It was his apartment. It

was very nice. I stayed there. Nothing wrong with that. But I was not in business with him. He would have loved to bury me, but he couldn't. That is why he said in all his 250 times listed here he had nothing to do with me.

Mr. Hocher said I told him to donate his stock to B'Noth Jerusalem. That is true. That is true. Mr. Stein said to me, "How about getting in a charitable thing?" What's wrong with that? That sounds good to me." He said "See if you can get people to donate stock to B'Noth Jerusalem" so at this meeting I said to Hochen, who was my accountant for ten years, who got wealthy with me, "What's wrong, donate your stock, get a tax write off."

He said, "I don't want to donate my stock." I didn't force him to do it. I said, "I think it would be a good idea." And he said, "I will sell it to them for a thousand dollars" and I said, "Good, sell it to them for a thousand dollars, what's wrong with a girl's school in Israel getting supported by outside money."

I didn't take it from poor people, that stock. I didn't take it from anybody. He got paid for it, from a charity. What's wrong with that. The Catholic Church gets stock every day, the Protestants get stock every day, the Jews could get stock every day. What's wrong with that? Nothing wrong with a charity getting money.

That is the big thing, I told Hochen to donate the stock, and I go to jail because the charity made the money. They didn't show where I got a nickel out of this.

Stein sits up there and says, "Well, Lockwood got $50,000, Feiffer got $5,000 and he split his money with Rubinson."

Does that make sense to you? Is Stein going to split with anybody and end up with 20 and give me 20? It's crazy to believe a thing like that, that Stein would do that. He is the only one who ever said I got money out of this deal, nobody else. There is no pieces of paper in evidence. Nobody ever got on the stand and said they ever saw me get a nickel, except Stein, and who could believe him?

You know, there is an old expression: You dig a hole for somebody else, you fall in yourself. Let's put him in that hole where he belongs.

On that note, on the burial of Stein, I am going to sit down. That is what we have to do, with your help.

THE COURT: At this time we are going to recess until 9:30 tomorrow morning. That is a half hour earlier than we usually start, ladies and gentlemen, 9:30 tomorrow morning.

The jury is excused now until 9:30 tomorrow

* * *

THE COURT: All right, bring in the jury.

(In open court, jury present)

THE COURT: Mr. Andrews, are you ready to proceed?

MR. ANDREWS: Yes, your Honor.

If it please the Court, fellow counsel, Ms. Lof, ladies and gentlemen of the jury:

I want to thank you.

Of course, I know it is a matter of duty that you s... here but I want to thank youfor the patience with which you have watched and listened and considered

the case for eight weeks and more, and for the intent with which you will deliberate and listen to Judge Motley when she instructs you on the law and decide the fate of these people thereafter.

My clients appreciate, and I, as a member of the bar, appreciate it.

At this time I am going to have to apologize up front. I think I will do it now rather than interrupt my remarks with apologies, as I read to you, sometimes at length, from the trial transcript.

For reasons which I hope will be apparent to you, I am not going to rely on my recollection of what was said in court in certain specific areas, and I am going to ask you not to rely on yours but to listen intently to what was actually said by the witnesses, principally Mr. Stein, as well as a number of others on certain points which I consider to be significant, and in fact dispositive of the questions you are going to have to resolve when you get into the jury room.

Mr. Stein, and there is no question about it, took the stand and said very clearly that he agreed with Mr. Levine to give him money.

He said a little less clearly that he agreed as well with Walter Wax, or words to that effect, and that

md:mg 4

perhaps Walter Wax had said he had received the money, perhaps he didn't.

But there is no question that if you accept the testimony of Sidney Stein then you must convict Walter Wax and Larry Levine.

Everyone who has come before you now on behalf of the defense has attacked the credibility and believability of Sidney Stein.

It is not because it is fashionable to do so. If there was no Sidney Stein, there of course would be no case.

He is the cornerstone of the Government's case. He is the entire case.

I am sure all of you at this point have severe doubt about whether or not these men had any unlawful intention respecting the spin-offs.

I am sure you have doubts about that.

Sidney Stein is what makes these people guilty, if they are guilty, of a crime. It is his testimony. So we have got to evaluate his testimony. And in doing so I want to go directly to his testimony and look at it, and show you time after time after time, by objective, external facts, that Sidney Stein was lying right in this courtroom to you.

md:mg 5t

He is a convicted perjurer. In the past he has lied and admitted it. He has done about every kind of vile thing a human being can do in the area of deceit.

But in this courtroom, on that witness stand, he actually lied to you, sat there and committed perjury wilfully and wantonly.

The doctors have told you about him. The psychiatric report is in evidence, and they are the Government's own doctors.

Psychiatrists are funny. Usually they don't want anyone to go to prison. In order to get them to recommend somebody go to prison you have got to be some kind of an individual. They recommend that Sidney Stein go to prison.

It is in the report and it is in evidence.

They also told you that Sidney Stein is psychopathic. That means he is without conscience, in my layman's understanding of the word.

It is your understanding that counts.

But that means he is not motivated as you and I and these men in the court and everybody else that you associate with, by the same kinds of things that you consider.

A psychopath is motivated, I submit to you, and it is your decision, solely by what is good for him in any

given situation, without regard to whether it is right or wrong, without any kind of moral impact. He is motivated by what will get him out of trouble, what will get him pleasure, what will avoid him pain.

He has lived a life of crime. At least the past fifteen years he has done that.

We know that this Government of these United States have been trying to get him in one way or another since 1944; when he had his first psychiatric episode. At that time, of course, we were in a world war.

The medical report tells us that he was exempt from the draft because of psychiatric problems

Those problems do not manifest themselves again until 1950, when again this country is at war and Sidney Stein has his first shock treatment, another psychiatric problem.

The psychiatric problem manifests itself again in 1972 when Sidney Stein is in the shadow of a federal prison.

The doctors know, and they will tell you if you take that report with you in the jury room and read it, that he is sick, really sick. But he is not floridly psychotic, he doesn't sit there and dribble, and he doesn't sit here and rant and rave in meaningless phrases.

What he does is use this sickness in a twisted, distorted, evil way to make money, to live easy, not to work, to commit crime after crime,to evade justice, to frustrate the courts, to frustrate the United States Attorney.

And he doesn't care that much (snapping fingers) about coming in here, looking every one of you in the eye, and lying to you, if it will accomplish a purpose.

And I am going to tell you, and I think you are going to accept on the basis of what you can see from this record,what his purpose is, and what his motive is -- in addition to staying out of prison, there is more I will show you, and I promise you I will show you.

Before we get to that, what I would like to do is examine the first critical lie that comes to mind that Sidney Stein told in this court.

Mr. Wohl reminded me of it yesterday because it had diminished in significance in my own mind. I had forgotten it. It got lost in the telling of other lies.

But Mr. Wohl said to you, in substance, I think, with respect to the first purchase of stock on May 22, 1969, by the B'Noth Jerusalem from Lockwood & Company, directly from Lockwood & Company, he told you that Sidney Stein, or he recorded you that Sidney Stein had said under oath

md:mg 8

that that stock was purchased by B'Noth at his insistence because Larry Levine was angry that he, Sidney Stein, had been selling so much stock that Larry Levine could not handle it, he couldn't hold it. He had taken in so much stock he didn't know what to do any more, and so, as an accommodation to Larry Levine, Sidney Stein induced the B'Noth Jerusalem to purchase 2000 shares on May 22.

That, ladies and gentlemen, is obviously, as a matter of record, on paper, a bold-faced lie.

Because -- excuse me, the Government never bothered to look. The whole case is based on their willingness to swallow without corroboration every single thing that Sidney Stein told them. That's why this case is here.

He went in and he told them a story and they believed it and they accepted it and nobody bothered to look at the trading, nobody bothered to examine the history of the trading between the time it started in April and May 22, when the B'Noth Jerusalem bought 2000 shares to take this big load of Larry Levine at Lockwood & Company.

Had they looked, and had they taken the trouble to tabulate, what they would have found was that at no time between April 28, when Lockwood made its first trade in the stock, and May 22, when B'Noth bought 2000 shares

from it, did Lockwood have a long position in the stock.

I have tabulated it and you can do it with your exhibits which you are entitled to take to the jury room. But at no time during that period did Lockwood & Company own stock.

They had sold more than they were able to buy. Every single trade increases their short position. They are selling stock they don't own.

On May 22, if my figures are accurate, and you can figure it out for yourselves, the first trade of the morning they were 500 shares short. That means they had sold 500 shares they didn't own.

The B'Noth Jerusalem came in and bought 2000 shares. That made them 2500 shares short.

Stein is lying to you. He sat right on the stand and lied to you.

Now the psychiatrists don't understand it, from what I am able to gather. I myself don't understand it. I accept it that there are Sidney Steins in this world and that they don't give a hoot about their fellowman in the slightest. Every act that they perform, everything that they do, is motivated by their ~~good~~ own good, what is good for them, regardless of how they hurt other people.

And the reaction of members of the community who are good people, who have friends who are good people, who don't, because of their goodness, associate with people like Sidney Stein, when they are confronted with a Sidney Stein, or an individual like that, a pathological criminal, a psychopathic criminal, is to say, "he couldn't really be that bad. I know such people exist because I've heard it but he couldn't really be that bad, and I couldn't be in the same room with him, I couldn't be 10 feet from him," is what they think.

But you were. There is his first lie. He sat here and told it to you under oath.

But that is only the beginning. That's just the first one that I am going to show you.

The second one came when he told you about how it came to be that Lockwood and Company became a market maker in the stock of Stern-Haskell. Do you remember the long winded explanation of how that happened?

I hope I didn't lose you during the trial because I had a motive for the way I asked him the questions, and led him, and led him, and let him go along, and let him tell me about how Michael Gardner started the market, that Michael Gardner didn't perform, and he got disenchanted with Michael Gardner, and how much time did he wait, weeks, two,

three, four weeks. And then what did you do when you were disenchanted? I had a meeting with Levine, and I had another meeting with Levine. Different days, different periods of time.

I would like to read you his testimony. This is so critically important that I am going to read every word of it to you, and please, please, bear with me. Because it has to do with his credibility. It is the fundamental cornerstone of the case. And if the Government, ladies and gentlemen, had looked into this testimony the day Sidney Stein sat down with Frank Wohl in his office and told them this tale, which should have started with once upon a time, the day he walked in and told them, if Frank Wohl had sat down with a piece of paper, a pencil and a calendar he would have figured out what Stein was doing to him. He would have looked for Stein's motive, looked for Stein's reason to tell this fabulous concoction. But he didn't do it. He fell all over himself.

A young prosecutor, he took this psychopathic, convicted criminal's word, when right before him in black and white were the answers to the doubts that should have been in his mind when he was dealing with such an individual.

And here it is. Please bear with me. The ques-

tioning started:

"Did there come a time when Mr. Gardner in fact started to make a market in the stock?"

The answer was "Yes." And we all know from looking in the records that that day was April 16, aWednesday, 1969. It is a matter of record in the pink sheets.

Next question: "And what happened with the stock after that with respect to the price, the activity?

"A I don't know. I would have to look at the records to tell you.

"Q Well, did you follow it back in those days?

"A Yes.

"Q How did you do that?

"A By either asking him or looking at the pink sheets or calling the broker.

"Q Did you do that every day?

"A I think so. But I am not sure.

"Q After a period of time passed, you would be checking the pink sheets?

"A Every day.

"Q Calling the broker?

"A Every day.

"Q And you were somewhat dissatisfied with the performance of the stock, is that correct?

"A Yes.

"Q You expected what to happen?

"A I expected the stock to have a sponsor. I wanted the stock to become known to investors and to brokers. I wanted the stock to seek a course, a normal course, based on the auction market.

"Q What was the normal course? What did you expect it would be?

"A I thought the stock was worth $6, $7, $8, $9, $10.

"Q You wanted it to work itself up to that level?

"A If that is where it would go."

Skipping a couple of pages.

"Q You didn't want to see the stock skyrocket to go to 6 or 7 overnight, did you?

"A I didn't think it could.

"Q You expected the price to gradually move up, though, is that correct?

"A That's correct.

"Q But at some point in time you became dissatisfied with Gardner Securities?

"A Yes.

"Q Is that correct?

"A Yes.

"Q You were watching the sheets every day, day in

and day out, calling the broker the price is not moving like you want it to, is that correct?

"A Not really. He just wasn't retailing the stock.

"Q You gave him a fair chance, didn't you?

"A Yes.

"Q You gave him a fair chance, didn't you?

"A Yes.

"Q You gave him a pretty good chance to get that market going?

"A Yes.

"Q You gave him a chance to go out and talk to other brokers the way brokers do, and there was nothing wrong with that?

"A No.

"Q But you expected that he would create interest in the stock?

"A In a normal business-like way.

"Q You didn't expect him to do that overnight, did you?

"A No.

"Q You were going to give him a fair amount of time to do that, isn't that correct?

"A Yes.

"Q Is two weeks a fair amount of time to see whether

you are going to get interest in the stock?

"A Not really.

"Q Is three weeks a fair amount of time?

"A Sometimes there are mitigating circumstances. Sometimes a broker doesn't have information, sometimes it takes time for him to get in the pink sheets, sometimes they wait and do their due diligence. There are lots of reasons why a broker doesn't start at the beginning.

"Q But you gave him plenty of time to get started?

"A Yes.

"Q Then you became dissatisfied, is that correct?

"A Yes.

"Q Then you decided to go to Larry Levine, and so you had a meeting with Rubinson and Feiffer, isn't that so?

"A Yes.

"Q And you discussed with them the prospects of going to Larry Levine, correct?

"A Yes.

"Q And it was agreed that you should go talk to Larry Levine, correct?

"A Yes.

"Q And so you went down to see Larry Levine at Lockwood & Company?

"A Yes.

"Q Or you may have seen him at dinner?

"A Or whatever.

"Q Or you may have seen him at the apartment?

"A Or whatever.

"Q Then you talked with him about this company, Stern-Haskell, and you told him it was really a good company, isn't that correct?

"A I told him all the things that I knew to be about the company, that I knew at the time.

"Q And he indicated some interest in the stock?

"A He said he would look into it, yes.

"Q He wanted to go see the company maybe?

"A Yes.

"Q Talk to the executives?

"A I think he told me that.

"Q Apprise himself of what the company was all about?

"A Yes.

"Q And he said he would get back to you, is that correct?

"A Yes.

"Q And did he get back to you after a while, isn't that so?

"A Yes.

"Q How long after a while?

"A I don't remember.

"Q Well, enough time for him to have visited the company if he wanted to, to have met the executives, if he wanted to?

"A A short time later.

"Q A week.

"A I don't know.

"Q It wasn't that afternoon, was it?

"A No.

"Q Three or four days later?

"A At least that or more."

Thank you for listening and following, because what he described to you on that witness stand under oath, looking youin the eye -- I don't know if he looked any of you in the eye, but he did me a few times -- was this scenario of events that had to have happened over a period of weeks at least, perhaps several weeks at least.

Take a look, if you will, and you know from the evidence exactly when Michael Gardner started the market in the pink sheets.

I have put it on the blackboard. It was Wednesday, April 16, 1969.

Thursday was the 17th of April, Friday, the 18th, Monday, Tuesday, by Wednesday, Lockwood & Company -- Wednesday of the following week -- had to have decided to be in the pink sheets and had to have put notice with the National Quotations Bureau that they were going to go into the pink sheets, because low and behold, they appear in there on Thursday, the 24th, and that is 1, 2, 3, 4, 5, business days after Michael Gardner started making the market.

How could it be? How could it have happened the way Sidney Stein told you under oath it happened? Why didn't the Government take the trouble to look? I pulled out a calendar, why didn't the Government do it? They didn't do it. They fell all over themselves to accept his testimony.

You may recall at that point in time I asked him the following questions.

"Q You had a number of meetings, five meetings or maybe six, whatever.

"A Right.

"Q All of them at different times? Different days?

"A Correct.

"Q Different people present at each meeting?

"A Yes.

"Q At some point in time, the second or third meeting you made an arrangement as to how much money he would get as a pay off?

"A Yes.

"Q And after that, after that meeting of the minds, Larry Levine agreed to be the market maker in the stock, isn't that correct?

"A Right.

"Q And then he went into the sheets?

"A Yes.

"Q And started to make a market, isn't that correct?

"A Yes. "Couldn't have happened. There is no way it could have happened that way.

It is not just a mistake, it is an outright lie, and the Government knows it. The crying shame is they could have known it before the put everybody through this, they could have checked, but didn't do it.

"I concluded my cross examination and gave Sidney Stein during that cross examination a copy of the pink sheets and laid them up there so he could see that he was trapped in that 5-day senario. He sat there and studied them and studied them and when I concluded and sat down one of my colleagues got up and began his cross examination of Stein and Stein suddenly came to life and he said,

"A ha" and he started to shout down at me, and he thought he had figured a way out, the criminal mind was clicking like crazy up there. He said, "Levine is in the sheets, but he is not putting in a bid, he is just there, notice of interest."

Well, that's irrelevant, and I will explain why in a minute. But the fact of the matter is, Larry Levine, and Lockwood & Company, and there is no proof in this record that Larry Levine is the one who started Lockwood in the pink sheets, but Lockwood & Company or Larry Levine, if you like, as he was the head trader, put the stock in the pink sheets and began to make a market five days after Gardner.

I don't want to belabor the point, I really don't, but it is overwhelmingly important, because it establishes Stein a total liar. Stein said he wasn't making quotes. Therefore, he wasn't making a market, he attempted to save himself that way.

The Government prepared an elaborate exhibit to, I submit, dignify the pink sheets. That is Exhibit 671, and it is available to you. That exhibit purports to tell you what the bids were in the pink sheets during the period of time when this stock was trading, and then attempted by this exhibit and their witnesses to make it appear that the bids in the pink sheets were significant.

Well, they called an expert, a lady named Mrs. Nelson, and what did she tell you, with her credentials, all her experience? She told you that the pink sheets are nothing more than a telephone book.

I can read it for you, but I won't.

She said the pink sheets, the most important column in the pink sheets, is the telephone number of the trader. She pointed out, and the pink sheets are in evidence, that on the first page 20 out of 35 traders didn't even have a price in and she said that was representative of all the hundreds of pages in the sheets and finally said that if a trader's name is in there, he is in there to trade and make a market.

Don't take any recollection, if it differs with yours, calling for the testimony when you are in the jury room. The Government is stuck with that lie and it crushes the case, because Larry Levine got into the pink sheets some other way, Lockwood got into the pink sheets some other way, totally unrelated to Sidney Stein. It is significant for that reason and because Stein is a bold-faced liar. He sat down and contrived this whole story for you, and there it is as a matter of record, an absolute lie, incontrivertibly, from a sworn perjurer and psychopath who has everything at stake, everything to gain, everything to

lose, by what he did in this courtroom and what he did to these men.

If Stein had not told the story the way it was, we wouldn't be here. If Sidney Stein was sitting at that table with these men, we wouldn't be on trial here. This is why we must look into him and you must search your hearts to see whether you believe him -- not whether you believe him here, that is not the first question, but is such an individual believable under any set of circumstances. That is the initial question you have to put to yourselves.

You begin to see why, I think, and I hope, and probably most of us have seen from the outset, perhaps even since we were back in grammar school, what Mr. Robson so eloquently put to you about the presumption of innocence.

There is no way on God's earth that any man can come in here to this courtroom, or any woman or any person, and prove to you that in April, May, June, July, August, 1969 they took in cash -- or they did not take in cash, 5, 10, 20, $50,000. How could I prove it to you, that I didn't do it, how could any of you prove you didn't do it? How do you prove a negative? That is why we have the presumption of innocence. That is why the Government must prove beyond a reasonable doubt, to a moral certainty, to each of your satisfaction that they did take money in April,

May, June, July or August, 5, 10, 15, 20, $50,000 worth of cash. There is no way these men can prove they didn't take it. They didn't have film running on them all the time, people with them all the time. The Government has to prove to beyond a reasonable doubt. How do they do it? They put witnesses on the stand who are credible and believable in a case that they ought to prosecute and witnesses that they can corroborate in some way.

How do we then, since I think everyone will agree the defendant stands or falls or the case stands or falls on the testimony of Sidney Stein and, to a certain extent, Phil Kaye, but I will get to him later -- how could we decide whether or not, if we really have to, Sidney Stein is telling the truth?

I think the first thing we have to do, since we can't prove that we didn't take the money, is look to what happened at that time as best we can reconstruct it. Look and see if the surrounding circumstances tend to corroborate an allegation by Sidney Stein that Larry Levine and Walter Wax received a dollar a share in cash, or some other amount, by some formula that was never made specific for the stock they dealt in of Stern-Haskell during the period. Let's see what happened during that period of time to see if it tends to support Sidney Stein's statement.

I would like to look first at what Walter Wax was doing during that time.

Here is Walter Wax, a stock broker for many, many years, as told to you by Mrs. Dundish, you know he has a family, through the testimony of other witness, who said his daughter used to work at Lockwood all summer, the kid going to school and working in the summer. He is a man in his sixties. You can tell that by looking at him. He becomes a broker who trades, purchases for some of his customers some of the stock of Stern-Haskell.

He works at A. T. Brod and Company and A. T. Brod purchases account for approximately 25 percent of the purchase of Stern-Haskell to retail customers during the period.

Let's assume, although I don't think it was proven, that Walter Wax, just for the sake of this argument, accounted for every one of those 25 percent of the shares with his own customers and let's see if we can bore back into that period of time through the witnesses that have been here and find out what happened, what did he do.

The Government had, and Mr. Wohl told you yesterday, the ability to call anyone of perhaps 30 customers of Walter Wax who bought the stock. They called three, and I think as reasonable people, you have to assume they called

the three that would best suit their purposes if they wanted to hurt Walter Wax. I assume that is what they were thinking. They could have any of the 30 but they picked a little old lady, Mrs. Dundish, they picked a Rabbi and a businessman, a good cross section, and you have to assume they were the best of the bunch.

Mr. Dundish told you, and Mr. Wohl suggested you shouldn't believe her but believe Mr. Stein, and she said when the stock got to about one and a half she decided she wanted to average down and Walter Wax said, "I don't think you should. It doesn't look good. The company is not doing well."

Is that the act of a guy who is getting a pay off? Is it? Does he look like a cold, ruthless man? Take a look at him. This is an old lady who lives on Social Security and take a look at that ogre over there. She came in and said he said, "Don't buy it." Is that what a guy does who is getting money under the table?

Rabbi Schuchalter came in and testified he bought 200 shares, and you remember Mr. Grimes cross examined him that day and Mr. Grimes asked him in substance, would you have bought more if Mr. Wax told you to buy more, and he said it and it is in that record, "If he said, buy 500, I would have bought 500." And that is a rabbi, a man of

religion. He said "It is a good spec, take a couple of hundred shares." Is that the act of a man who is getting money under the table for every share he pushes out? Is that the way you sense the testimony? Don't forget, these are the witnesses who are the best for the Government of the 30.

Take a look at that ogre again and see if he looks like the kind of guy who is going to swindle a rabbi, who has been a customer for years.

Mr. Altschuler, the last customer, testified that he had at the time a cash pool of about $45,000, he was obviously a very successful businessman and wealthy man and he had that $45,000 because Walter Wax recommended that he sell a stock that later plummeted. He sold it very high on Mr. Wax's recommendation and plummeted into the seller, down to about 60¢. Did Walter push him to put the whole $45,000 in? Absolutely not. Wax didn't push him at all. His testimony was "Wax told me, they are in the black. It is a good spec." Be very careful, he said, "It is a good spec" a good speculative stock," they are in the black" and that is the only representation any witness said Mr. Wax made to them.

What did he have to base that statement on? He had final statements showing that the company was in the

black. They are in evidence. You remember we showed them, gave them right in open court, we had them. The Government was going to rely on a final statement that was not available until October 10 of 1969, which was certified, which showed the company to be operating at a loss, but yesterday Mr. Wohl, in relation to his argument regarding Mr. Gardner, says based upon the only information then available, the company wasn't earning 125,000 but the implication was that it had earnings -- not 125,000 as he says Mr, Gardner inferred.

Those financial statements were in the possession of Mr. Wax and Mr. Levine, showing the company in the black. Mr. Stern said they were his financial statements and they were true and they were the financial statements of Stern-Haskell.

They also had the letter which you will remember we got up and gave Mr. Wohl the original of. He knew we had it, would use it as part of the defense, so he offered it as a Government exhibit, that letter giving you the history and plans of Stern-Haskell. That is what these brokers knew, and that is all they said, it is a good company, a good speculative stock.

Another interesting question: If Mr. Wax or his firm and, for the sake of argument, Mr. Wax, sold only 25

percent of the shares, somebody had to sell the rest, 75 percent of the shares that were sold, and Sidney Stein didn't talk about paying off any other broker. So why did he have to pay Wax, if the shares were marketable? 75 percent of them were marketable without pay offs, why did he have to pay off Mr. Wax? That defies your common sense. These witnesses indicate that Mr. Wax was not acting like a fellow who is motivated like a fellow taking money under the table. What do we know about Mr. Levine at that time, what can we snatch from the evidence that came out? The Government tried to raise an innuendo he was the owner of Lockwood & Company. That is absurd. Finally, when we got somebody other than a Weitzman on the stand who told you about a third party heresay rumor he got -- this is the kind of evidence they drag out in a conspiracy case and this is why conspiracy is so hated by free men, a McCarthyistic exercise, guilt by association, and every other thing. It permits a Weitzman to come in and say "Well, somebody said that he was the owner of Lockwood."

It permits somebody else to come in and say "He is a communist or a traitor" and then we can shoot him by a firing squad. When somebody from the company came on to the witness stand, I put in the question, "Who is the owner of Lockwood?" He looked at me like I was crazy and he

said Ben Malmeth. Do you remember, Mr. Jerry Ochart? He worked in the back office. So the Government dropped that theory then and there.

If we wanted to pursue it further they would have had to call Ben Malmeth, but they didn't want to do that.

I would like you to consider the testimony of Louis Abt in the light of the other testimony given by the expert, Miss Nelson. Mr. Abt is himself an expert. He was called as a Government witness. He worked as the order clerk - trader at Granger and Company where a large portion of the stock was sold. Mr. Abt is a real expert, has been a trader for many years, and he said to you that price is not the only consideration in determining who you trade with as a trader. He set forth a number of criteria. He set forward that a trader who knows the street will consider the financial responsibility of a house, ~~its~~ the willingness of a house to deal in size, consider whether or not it has a record for having given prompt delivery in the past, paying promptly in the past, consider whether or not he had had any problems with them before and all this is on the question of whether or not Lockwood and Company became the trader, the market maker for about 90 percent of the Stern-Haskell stock when it was trading.

Mr. Abt said that these are the factors that you consider, and having considered all of those factors, Mr. Abt gave the following testimony:

"Q Did anyone suggest that you go to Lockwood and sell them the stock?

"A No.

"Q Nobody steered you, in other words?

"A No.

"Q You just went to them as the best market maker, is that correct?

"A That's correct."

That was his testimony.

He further testified:

"Q Now, with respect to any house, the financial responsibility you have spoken of, the willingness of it to make a sizeable market, the lack of problems in delivery, problems in payment, it is not surprising to you that that given house should be the prime market maker in this stock, is it?

"A No, it won't surprise me.

"Q And you would give them the prime call, wouldn't you?

"A Certainly."

He testified he had gone through those considera-

tions and that is why Lockwood got the prime call. He also told you all the orders were limit orders, that if they were going to be filed, purchased, it had to be done at a certain price, the price of the offer. That will be significant later in relation to Miss Nelson's testimony.

If we may, let's contrast that testimony with Ms. Nelson, who said that it was like her visceral reaction, that it was peculiar that Lockwood & Company should have done 90% of the trading, and we asked her did she determine whetheror not Lockwood was a better house financially than its competition.

She didn't even look. And she is a member of the SEC, an employee of the SEC, who has all the records of all the houses that trade on Wall Street since 1933,the financial statements.

Wouldn't it have been powerful if she came in here with financial statements that showed Lockwood a garbage dump compared to its competition?

She didn't because that is not the fact; it is better than its competition and you must assume that is so because if it wasn't, the Government would have proven it.

She had never spoken to anybody about Lockwood & Company and about its competition; indeed she didn't even know who the competition was. She just came in and said: It is my experience that this is strange, that one house should be the prime marketmaker.

At another point in her testimony she admitted thatoften one house is the only marketmaker in the stock.

She was not the only one who said that. The

rm:mg 2

executive vice president of the National Quotations Bureau said that; it is not uncommon, not unusual for one house to be.

All of the real experts in this case told you there are reasons why the trading went to Lockwood.

The Government shouldn't try and show that Lockwood wasn't entitled to get the trading, the prime call in this case, but what they did was put a lady on the stand who didn't know anything about the case, who had been with the SEC and a number of brokerage firms in many capacities and had wide experience, but never as a trader, never running a trading room, who had never looked into the facts of this case, to give you guesswork opinion, and that is exactly what it was.

You don't have to take my word for this, you really don't, because you have some objective basis for comparison here, to figure out what kind of a house Lockwood was.

If you remember the testimony of Mr. Torelli, another Government witness from Florida, who had a brokerage firm of his own in Florida, and it sounded like a good firm, a sizeable firm, had two floors of an office building, apparently did business without any problems, he had in his trading department one trader, and in his trading department they traded 35 different stocks. That's all.

rm:mg 3

Jerry Mark, who was a trader's assistant, now a professional trader in Wall Street, was called by the Government to testify, and he, by the way, would have been a defense witness, and was, I submit to you, and he testified that at any given period of time Lockwood & Company traded 250 stocks. They were in those pink sheets every day making a market in some 250 stocks, offering to buy, offering to sell.

Not a little house, not a shlocky garbage house. They did some 200, 250 trades a day. That is a lot of trading. They had four full-time professional traders employed. They had a trading assistant.

There are other indications that Lockwood was not a shlocky little house. They cleared through a bank and were one of the few small houses then that did, and when I say small house, I am not contrasting them with Merrill Lynch, to the mighty level, the fly-by-nighters, but the middle level area where the competition was, Lockwood was one of the few and the experts said their bank was a good bank, a big one, an impressive one, and that is the one she would have traded with that house, all things being equal, because it ~~traded~~ cleared with a bank.

There were reasons why Lockwood got 90% of the trading, why Lockwood was the prime call that these traders

told you about.

There was some testimony in this area about preferential treatment to stockholders through Shaskan, Granger and Tessel, Paturick, the three big board houses where Mr. Stein had his accounts.

You were told they got more for their stock than anybody else.

Let's assume that that is true and I think in most cases you will find there is an eighth of a point, a quarter of a point difference-- I will withdraw that and get to that later.

You were told by the traders from those houses, and it was agreed, that every share that they sold was on a limit order. That means the customer, in this case Sidney Stein, called up his customer's man at those houses and said sell, for example, 1000 shares at $4 and what he said was, in effect, "Don't take a penny less."

That puts it on the market at $4 and if it is going to be bought, it will be bought at $4 or more but not $3-7/8. If the market is 3-3/4 to 4-1/4, you may get 4. If you call your broker and say sell 1000 shares at the market at the same time, you will get 3-3/4 because that is the market order.

Stein is smart, he got that extra eighth or quarter

of a point. He put them on limit orders.

If this was the result of preferential treatment by Lockwood, or by Mr. Levine, we have to start with this idea:

You have an active, busy trading room; houses are calling in all thetime and if you look at the charts you will find there is a lot of activity from these houses, it is a situation like the story about the bank teller or the accountant, the bookkeeper, that never took a vacation in twenty years, never took a sick day, couldn't do it because the day he did they would discover he had been embezzling $100 million from the company; somebody would look at the books.

If Levine were given preferential treatment on the stock he never would have been able to leave the room, would have had to stay there all the time.

What does Jerry Mark tell us about that? He says to you, and this is the question:

"Q Do you recall that often during the day he was not in the trading desk but resting elsewhere outside the trading room, often during the day?

"A He was not in the trading room.

"Q Do you recall that often he was not in the trading room, is that so?

rm:mg 6

"A I don't know if he was resting, true.

"Q Whatever he was doing, he was not in the trading room, is that correct?

"A Correct."

Jerry Mark, a Government witness who owes these people nothing, has no reason to lie, who has testified under oath before, said that Levine wasn't there a lot of the time,much of the time, often wasn't there.

If he wasn't there and preferential treatment was being given to these houses, who did it, Jerry Mark orthe other traders, but we know it wasn't preferential treatment, because we have had testimony here:

"Q Do you recall whether or not he gave you any specific instructions with respect to the stock of Stern-Haskel as on occasions that he was not present in the room?"

And the answer is: "No."

And it was clear from the testimony, you will recall that many trades on Stern-Haskell were done when Mr. Levine was not in the room.

"Q Did he tell you to do anything improper with respect to the stock of Stern-Haskell?

"A No.

"Q Did he tell you to give any preferential treatment to any seller of the stock of Stern-Haskell?

"A No.

"Q As a matter of fact, during the entire period of time that you were at Lockwood & Company, did Mr.Levine ever tell you to do anything improper at all?"

And the answer was "No."

How couldhe have given preferential treatment by design to these houses under those circumstances, when he was often not in the room, when trades were conducted outside his presence?

The Government tried to put together an exhibit to establish that Mr. Levine was responsible for the trading at Lockwood, and it blew right up in their faces.

Do you remember when Ms. Nelson was on the stand and I asked her about the chart, the first chart that they prepared--not the one that was given to you, the jury, and to us, but the very first chart they prepared, and she said, "Oh, yes, we prepared the chart, the first chart,but we withdrew it and the reason was we made typographical errors on page 4, made a few mistakes," and she pointed to two or three trades she said were typographical errors.

So they withdrew the chart and retyped it, 19 pages, for four typographical errors on page 4.

The only thing they did do that you didn't see, was that they deleted the column called "Lockwood Trader."

rm:mg 8

This exhibit is in evidence. See it? A column called "Lockwood Trader."

Some busy beaver over in the U. S. Attorney's Office figured to nail the coffin shut and have Mr. Levine doing all the trading. He found that he could only establish that Levine did 21 out of 217 trades on Stern-Haskell. He found, further, when he talked to Jerry Mark, that he couldn't establish Levine did any more trades than that.

In fact he found that probably Levine didn't do any more trades than that and if he didn't, maybe he did twice too many, 42 out of 317, or maybe three times that many.

They were dead and they came and took this chart back, but we got it, we have it, and I show you the duplicity of this Government.

It would have been a good point, if Levine had done it, but he didn't do it.

This stock was handled at Lockwood like any other stock, no instructions were given to anybody to treat it specially, nobody was told to pay more for it to Shaskan, Granger, Tessel Paturick.

Levine didn't know. He treated it like every other stock.

The Government sat on its hands with this one and

really pulled this one back fast. They couldn't live with it.

I say to you therehas been no testimony from that witness stand and, after all, it is the Governments burden of proof beyond a reasonable doubt and defendants are presumed to be innocent, they are presumed innocent, and the Government must prove them guilty and here the Government can't even prove that Levine did the trades which they say were preferential.

It is almost like, -- what more do you have to say? Their main witness caught in two huge lies.

Stein said Levine didn't even know the stock was in Lockwood's name. That was a little bit of a touch of class by Sidney Stein, but if he said he knew the stock was in Levine's name, Ben Malmeth made a liar out of him.

Ben Malmeth signed the stock, worked on a different floor in the back office, Ben Malmeth had nothing to do with the trading room and you don't have to take my word for it, take Mr. Torelli's.

He said, "I am not a trader. I hired a trader who was a pro and let him run the trading room."

"He ran that end of the operation. I ran the back office."

It is the same thing at every brokerage firm there

is, and Stein knew it. Stein took the stock to Malmeth, asked him to do it as an accommodation and Malmeth did it and you find there is nothing wrong with putting stock in street name, nothing.

Mr. Carroll from the bank in Canada came and told you that.

As a matter of fact, the Government would like to isolate this and make it look like the dirty, evil thing, but it isn't. Every bank, every business in this town, every brokerage firm and every person or institution of substance owns stock not in its name, it is in street name, nominee name, and brokerage firms, day in and day out, take stock in the cage in their name that belongs to somebody else and endorse it for them, and that is what Malmeth was doing for Stein, and remember this, in 1969 who knew Stein was what he is.

His troubles didn't begin until later. Nobody knew at that time-- the psychiatrists tell you he is a brilliant manipulator of men, his activities in the stock market have made him well known through the financial community as a brilliant financial man and the psychiatrists have his number.

Take that report in there with you. In 1969 everybody thought he was a very bright guy who knew the

market and when he brings stock in and has Malmeth sign it, Malmeth does it.

Stein was bright because he knew that Lockwood cleared through a bank, and we brought it out of God knows how many witnesses, that if you clear through a bank the stock never comes back to you, even though you buy it.

If Lockwood buys 100 shares this morning of a given stock, that stock is not sent to Lockwood, it is sent to Lockwood's bank and from the bank to the transfer agent in Florida, who then transfers it over to whomever Lockwood sells it. Lockwood never sees it. Stein knew that.

He sits like a general, moving his pieces.

I would like to talk to you about some of the testimony of Ms. Nelson.

The first truly significant thing we know about Ms. Nelson is that she is a Johnny-come-lately to the case. She was dragged up from Washington to replace this (indicating) 700 pages of testimony of the last Government expert.

You can see I was ready for them. That is what she was here for.

Mr. Higgins showed you one illustration of why they wouldn't dare put that last expert on the stand. Tom

rm:mg 12

Fox, a Government expert, who had been with this case from the beginning, who had been around this building - Ms. Nelson said she saw him - he is alive and well, no broken legs, and who would testify to the tune of 700 pages, gives his expert opinions -- was not called here, but this lady, and I feel sorry for her because they dragged her in at the last minute, didn't tell her anything about the case, put her on the witness stand so they didn't have to put Fox on,and let us get our hands on him and tear his expert opinions apart.

That is what she was doing here. They couldn't live with what Fox said. For example, this woman volunteered an opinion, "Well, I think the trading at the beginning, this price level business, there is something wrong with it, it doesn't look right."

What had Fox said? What did he say about that two years ago? This is in evidence and I can read it to you because it was read into the record:

"Q Gardner Securities started off at a dollar bid and subsequently increased to a dollar and a half bid and three bid.

"This relates to a broker trying to establish a level around which a quote can be made.

"It is quite common -- this is common where a stock

has a small float and they are trying to establish a price range around which they can trade the stock and try to maintain a level between $3 and $5."

That was the Government's last expert. They put him on under oath two years ago and let him give an opinion before another judge in this courthouse and then reached out for another expert who would come in and give you a totally contrary opinion.

That is your Government-in-action.

They put that woman at a terrible disadvantage, but they couldn't live with that testimony, because that made everything Michael Gardner did not dirty, the way Stein would have you think. That made the original movement from the price from $1 to $3 to $5 and back to normal.

When a broker comes on the line with a stock for the first time, he doesn't know what it will trade at and he puts it in at $1.

He moves it up to two. If there are takers at two he moves it up a little higher, from three to five. If it doesn't trade there, he moves it down again. He's got a price level.

This takes a little time. That's the way it's done.

This lady "guessed" there was something wrong with it. Pure guesswork.

When you consider that, there is something significant, because when Mr. Lveine, or Lockwood and Company, began trading the stock it was in the three to four range. A couple of trades at two and a half to three and a half, insignificant little trades. It gets to three to four, and it is there almost from the very beginning when it was finding its level in the early part of the pink sheets. And then where does it go, this super duper manipulation, where does it go? It goes to four and a quarter bid. From three to four to three and a quarter to four and a quarter, and that's it.

What did Mrs. Nelson tell you about that? And these things I am harping on because they don't substantiate Sidney Stein, they are all I've got, all I can do for you to look at what happened then and see if it sounds like it is criminal. See if it sounds to you

like it supports what Sidney Stein said happened.

Mrs. Nelson said:

"Q As we concluded earlier, the trading at the end of the day was substantially profitable to Lockwood, isn't that right?

"A Yes. They got a higher price than they paid for the stock.

"Q So when they were paying four dollars a share to Granger and to Shaskan, as you pointed out, and those were limit orders, they were able to resell that stock at higher prices, and make a profit, isn't that correct?

"A That's correct.

"Q And that profit ranged within a quarter of a point to an eighth, isn't that correct?

"A Three quarters in case on the A. G. Edwards trade.

"Q On that 300 shares?

"A Yes.

"Q And that you would call an order to market, would you not?"

And she said, "Yes, that's correct."

The government's own expert called the market order it sound like a manipulation, like Sidney

Stein wanted you to believe it was? They brought a lady here who looked at the evidence, and said it was an orderly market.

Do you know what else was incredible? When I put it to this lady that every single trade, every single day of trading, resulted in a profit to Lockwood, every trade they made was profitable, and that's what a trader is for is in there to make a profit on as many trades as he can, and every day was profitable, I said to her, "Does that sound to you consistent with a guy who is making money under the table for every share of stocke he sells?"

She was shocked. Her response was, "I was not aware that there had been any kickbacks. You just pointed that out to me."

She is an expert looking at the trading, and it was not apparent to her that there were kickbacks. She was shocked to hear there were payoffs in this case, or an allegation by Sidney Stein of payoffs, because the market activity doesn't support the allegation.

The government's own agent, their own expert, after reviewing, after looking at the documents, indeed preparing the exhibits of the trading, looks at it and tells you that doesn't indicate a kickback situation.

Does that support Sidney Stein? Your common

sense -- you don't have to be an SEC expert to know that, really -- your common sense will tell you if a guy has got a deal to get under the table one dollar for every share he sells, is he going to be clamoring to make an eighth of a point profit on every single trade?

You would see -- and I have been around there a little bit, if there were payoffs in this case you would find more what we call wash trades in here than you would know what to do with. You would find more stocks bought at four and sold at four, or bought at four and sold at three and seven-eighths, because he doesn't care about losing 10 cents because he's just made a dollar.

That is what you would find. Not here. You find him reaching for a profit at every trade, or the trader at Lockwood, whoever he was, reaching out to make a profit, and making a profit on every on every trade. It does not support or substantiate Sidney Stein. In fact, it defies him.

Another piece of external evidence that makes him [illegible].

One other fascinating little thing that happened. We got a bill of particulars in the case. That is a document supplemental to the indictment. It charged there had been a payoff to Block here as well to my clients.

This thing, you can put an umbrella on it and sell hot goes out front -- this is the record against him. Every share of stock is accounted for. They know where every single share of stock went. You didn't find any evidenc of any stock going to either of these men, Mr. Wax or Mr. Levine, out of all the shares of stock.

Sidney Stein got up there and glibly said, "yes, they got stock, too. I heard they were going to get stock, too." I think he attributed that to Feiffer.

You don't find evidence of one single share of stock going to Mr. Wax or Mr. Levine.

So what did the government do? They searched through the trade tickets, I think it was No. 8000, Exhibit 8000 -- to be facetious. They searched through those tickets and at some point they found one for 5000 shares, a stock borrowed, L. Levine, it says, came free, because it is borrowed stock.

The expert said there was nothing wrong with that. The expert said this looks funny or peculiar. I asked her why. And she couldn't tell me why. That's how they prove beyond reasonable doubt that something happened that was criminal, and these men did it.

In this system of government and under this system of justice you don't send people to prison on

phrase like "you are entitled to infer" or "you may reasonably infer."

If I heard that once, I heard it 150 times from Mr. Kuhl. You don't send them to prison on "you may well infer." You don't send them to prison on Possibly. Which is what the SEC says, on even "probably." You send them to prison when you are convinced beyond reasonable doubt. You sent them to prison on moral certainty of guilt.

You know it is fascinating when you get into this justice system, if you have ever been civil trial jurors you might know, that judges will say in a civil trial the burden is by a preponderance of the evidnnce, and invariably a judge will go like this (indicating). I have seen it so many times, the scales of justice in their hands. And they are saying preponderance of the evidence. If you find that the evidence tilts this way in favor of this party, then you may find a verdict for that party and give judgment.

In a criminal case that's the way it works -- (indicating). Beyond reasonable doubt to a moral certainty. It goes down the scale, and it never comes up.

If you are saying, "Well, gee, that looks substantial, that's a guilty element, but, no, that one

looks like he is innocent, you haven't found beyond reasonable doubt. You can't.

You are not entitled to "you may infer, possibly, probably." No definite, moral certainty, that crimes were committed.

Now, I suggested to you that Larry Levine didn't know what was going on, and Walter Wax didn't know what was going on. Clearly, Sidney Stein did not put Lockwood in the pink sheets, and that's been proven beyond any shadow of any doubt. Lockwood was in the pink sheets for some reason other than Sidney Stein. And you heard testimony that Sidney Stein had a public relations force working in the street, and you heard it from of all people Phil Kaye, who said he was touting the stock for Stein, and he also identified another individual now dead named Hector Benanti. And Mr. Wohl jumped up on redirect and was almost in this posture -- are you sure Hector Benanti was doing public relations work for the company?

Yes -- he said, yes, he was doing public relations for Stern Haskell.

It's interesting, because Hector Benanit had been to Richard Stern and offered to do public relations for Stern Haskell and Stern turned him down. He testified. to that fact that he is out in the street doing public

relationship.

Why, and for whom? For Sidney Stein. Phil Kaye is out in the street doing public relations, touting. Why, and for whom? For Sidney Stein. And if you don't believe that Phil Kaye and Sidney Stein have worked together for years then I would like to offer you a deed to the Brooklyn Bridge, because it is just so obvious. Phil Kaye hasn't had a job since 1966. He touts stocks for television sets, wristwatches, nickels, and dimes, whatever he can get.

There are vivid illustrations that they were lying about their relationship. Principally the bank vault. Remember Phil Kaye -- Sidney Stein first got on the stand and he said, "I took him to my bank vault, Phil Kaye, the day he came up, this total stranger."

And I asked him, "You took a total stranger to your bank vault where you got all the cash, all the money, all the stock?"

And then he realized how stupid it was, how stupid it sounded, that he would take a Phil Kaye, a street rat who doesn't have a job into his bank vault and show him the million bucks that's in there. It wasn't stupid if they were pals and they worked together. He backed off from his story.

md 3-9

He said, "Oh, yeah, I didn't take him to the box with all the money in it."

I'd like to read it to you. When pressed with it, when put to him how stupid it sounded, this was his position.

"Do you have a bank vault in your apartment building?

"Yes.

"And that is where you took Phil Kaye, a total stranger, is that correct?

"I took him into the bank vault.

"The vault as big as a file cabinet?

"I didn't take him into that vault. I didn't take the proceeds of the money from the vault as big as the file cabinet."

Do you remember he described his vault, one of his vaults, as big as a file drawer? He gave you the dimensions.

"You didn't take him to the bank vault?

"I took him to the building," Stein says.

He backs away now, because he thinks it sounds ridiculous.

"I took him to the building."

Phil Kaye gets on the stand and he says, "He

took me and showed me the vault, he opened it, and it was the size of a file drawer."

The story had been worked out. Stein was shown how ridiculous it is if it is a stranger so he changed the story but forgot to tell Kaye.

A seemingly minor point, but telling. When the government has the power and the size and all we've got is the little shreds we can pull out of the witnesses, it's very meaningful.

It is my position that Levine did not know what Stein had done, that Levine became a market maker -- Levine, Lockwood, became a market maker -- by natural forces. And I suggest to you that it was Hector Benanit who recommended that they become a market maker in the stock. For whatever reason they became a market maker it is immaterial. It wasn't Sidney Stein's way, that's for sure.

I think I can prove to you bya government exhibit that Levine didn't know,that Lockwood didn't know, what Sidney Stein was doing. They became a market maker in this stock because they thought it was a good stock and a good trade, and they were right, because it traded profitably.

Do you remember when Saul Weitzman was making his

little tapes, and he came in and played one for you? And his testimony was that he had these 2000 shares of Stern Haskell stock that he wanted to get rid of, and so he took them to a broker and they were in the name of Lockwood and Company, and the broker wouldn't take them because he didn't have proof of ownership?

That shows you one thing: that these things were not negotiable simply because they were endorsed, and many witnesses so testified.

But anyway he wondered how he could sell that stock, and so on, on a certain tape, and it is in evidence, and you can get this transcript, if you want it.

He, Weitzman, says: "uh-- the only thing is I needed expense money so I went -- uh -- to try and sell some of the Stern Haskell"--

Answer: "Okay.

"And they told me that I need proof of ownership."

Answer: "I told you what to do. That's exactly what" -- interrupted.

"Weitzman: I got to call Lockwood."

"Feiffer: I told you. Did I tell you what to do?

"Weitzman: No. You were going to get back

to me.

"Feiffer: No. Didn't I tell you, you just can't sell it? It would have to be done through Lockwood because you needed proof, they'd ask you for proof of ownership?

"Weitzman: Oh, okay.

"Feiffer: Didn't I tell you they'd ask for proof of ownership?

"Weitzman: Right.

"Feiffer: Okay.

"Weitzman: Okay.

"Feiffer: Right.

"Weitzman: Then I'm going to call Lockwood."

Answer: "No.

"Weitzman: I shouldn't do -- uh -- call Lockwood?"

Answer: "No."

What did Weitzman do? He took it to Nordin and Nordin switched it for him into his own name without any communication from Lockwood.

Why shouldn't he call Lockwood? While all this was going on, why shouldn't Weitzman call Lockwood and ask them for proof of ownership so he can sell the stock?

The reason he shouldn't call them is because he

3-13

would tip somebody at Lockwood as to what was going on.

Here's Saul Wetizman associated with Sidney Stein, and we know that Saul Weitzman knew Larry Levine at Lockwood, because he had been there before, and Larry Levine knows that he is associated with Sidney Stein. Levine might ask a question. "What are you doing with 2000 shares in Lockwood's name?" he might ask, and that might blow the whole thing out of the water.

So he was told not to call Lockwood, and he never did call Lockwood. It was done for him with Sten Nordin, the transfer agent.

Now, you know, you have learned from this trial, that prior similar acts can be proven for certain purposes by the prosecution. You know that if someone does something which the prosecutor says is wrong, the prosecutor under some circumstances is entitled to show "similar" prior conduct for certain purposes, which Judge Motely will instruct you about when she charges you on the law.

But nevertheless they can show it, and they eagerly try to show it whenever they have it. You have never been shown, and you have not during this trial been shown, any "prior similar conduct" or relationship between Mr. Levine and Mr. Wax and anybody else in this case, principally Sidney Stein. If they existed you would have been shown.

Remember, Diston transactions were offered against some of these other men for the reason that Judge Motley will tell you. You never saw it here with them. The only relationship we know about in this case, and the only one that existed between Mr. Levine and Sidney Stein, involved one transaction, and that was the Blank Furniture deal.

Remember, Sidney Stein in the early part of 1969 brought Saul Weitzman to Lockwood and Company to have the underwriting of the Blank Furniture deal done. What happened? This will give you a little insight into the kind of man Larry Levine is. He is certainly not under Sidney Stein's thumb by any stretch of the imagination.

Larry Levine looked into it. He did his due diligence. He went down to Florida. He looked at Weitzman's company. He evaluated it. He looked at the financial statements. And by Weitzman's own testimony, and by Stein's own testimony, he told him to get out. He said, "I don't want your deal."

He knew even then that it was a crooked deal. He knew what the SEC found out later when they suspended the deal. They found another underwriter, Stein and Weitzman. They started the underwriting, they went to the SEC, and before long the SEC suspended it. Why? Because

there was a phony representation in their prospectus, there were material misstatements, it was fraud, and Levine had told him to get out with it, he wouldn't take it on. That we know as absolute, positive,objective fact.

The company ultimately went bankrupt at the end of 1969, and everybody got killed, all of the stockholders, all of the people who had subscribed in the underwriting. Levine threw it out. So Stein knew Levine was not a guy to get involved in one of his dirty deals, and that's why he went to Malmeth to get the stock signed. He didn't go to Levine. That is why Weitzman knew Levine, and Weitzman was told not to call Lockwood because he would have called Levine.

He said "Levine is the only guy I ever met there." So he would have called Larry Levine and asked him, and he might have tipped the whole scheme over for Stein; that's why he was told not to.

After that happened and after Levine refused to engage in that shady deal, Stein went around him and got Lockwood to sign certificates by Malmeth. It is not just a theory. It is there on the Weitzman tape. It is not just a theory. It exists in facts which these people admitted. Stein admitted Levine wouldn't take it. Weitzman admitted Levine wouldn't take it. They also admitted the SEC found

that it was fraudulent and withdrew it, forced them to withdraw it.

Sten Nordin testified that at no time did Lockwood and Company authorize the stock to be put in its name. He simply issued it in the name of Lockwood and Company for whatever reason, but not with the authority of Lockwood and Company.

He further testified that Sidney Stein paid the transfer fee, not Lockwood and Company. Sidney Stein paid the transfer fee to put the stock in the name of Lockwood and Company.

Why didn't Lockwood pay for it if they were in on the deal, as Stein said? Before he went to Michael Gardner to put it in the pink sheets, Stein had it in Lockwood's name. He intended to do that all along. He would have you think it was some kind of fraudulent concoction, but the objective evidence is it was in Lockwood's name long before Michael Gardner started making a market in it and clearly long before he would have gone to Lockwood or Larry Levine proposing this nefarious deal that I say never happened and never took place.

Everybody was running around with the stock in the name of Lockwood and Company, and here was this Sten Nordin in Florida transferring it willy-nilly without any

3-17

authorization from anybody at Lockwood and Company. Never.

Now, I ask you: Why would Stein make up this pack of lies? Why would he make up this particular story? I would like to read to you from Mr. Stillman's testimony. Mr. Stillman was called as a witness. Charles Stillman, Charlie Stillman, a lawyer. And you people will remember, I hope, that it was the defense that got him to waive the attorney-client privilege. I hope you will remember that I confronted his client with a letter that I had written to Charles Stillman months ago asking to meet with his client to discuss the case, and was refused. I couldn't get to him outside.

Mr. Wohl got up and made a pretty speech about I have the right to talk to all the witnesses. You saw what happened when I tried to talk to one. Turned down cold. I couldn't even have a conference with him in the presence of his lawyer.

When Mr. Kaye got on that stand we pressed for him to waive that privilege because I knew just as sure as God made green apples I knew that he hadn't said a word to his lawyer about Stern Haskell and his alleged involvement, and the alleged involvement of other people in Stern Haskell,

until after he was buried by this government with indictments up to his ears in trouble.

I knew that because I knew it was a lie, and I knew that these guys don't come up with these kinds of stories until they are in big trouble, and when they do those minds start to race, and they look and see what they've got to trade with, what have they got to bargain with, what can they get away with? That's how the criminal thinks. And here Kaye is, a three-time loser, three indictments. He's not just a guy who made a little mistake -- a three-time loswer, a professional criminal for the last ten years, at least.

... Charlie Stillman on the question of when he was told -- now, there is no dispute that he was told after the indictments, after Kay was up to his ears in trouble. Mr. Wohl knew that's what I wanted to get from Mr. Stillman, he knew that's what I wanted to get because Kaye wouldn't tell me when he had first told him, he left it vague. All we knew about Kaye was that he had lied about his involvement with Stein before the SEC under oath in 1969, and that is all we could get out of Kaye.

Mr. Wohl sensed, and he knew, what we were driving at, so what did he do? He dragged him in here as a witness for the prosecution in a vain effort to blunt the

3-19

thrust of what we were going to show you, that there isn't an ounce of sincerity and believability in this guy Kaye because whatever he said was said after the time that he was cooked and had a motive to lie.

Charlie Stillman on the point of when he was told -- I just want to use the language that he comes up with: "I think I would be more comfortable -- I think I would be more comfortable leaving it between the time we first began to represent him and some date early June of 1972. That's my best recollection.

"I think I would be more comfortable."

"That's my best recollection."

Let's go back to those days, if we will, and find out what was happening to Mr. Kaye on the one hand and Mr. Stein on the other. Simultaneously, they were both having their problems with this federal government, and rightfully so.

In March of 1972, Phil Kaye gets wind that he is going to be indicted in the Lady Goldie case. He probably knew about it a long time before, but it's getting pretty imminent now in March of 1972, so he hires Charlie Stillman, a very fine criminal lawyer, to come down to this office of the United States Attorney and try and make a deal to save his skin, to cooperate with the government.

3-20

This is the first move that most criminals make. Most guys who are caught dead to rights, they attempt to cooperate with the government, especially in this white-collar-crime area, in the narcotics area. This is what they do. Anything to avoid imprisonment.

Stillman comes down here and attempts in March of 1972 to negotiate on behalf of Phil Kaye a deal to get him out of trouble in the Lady Goldie indictment that he's about to get. Those negotiations are unsuccessful, and Phil Kaye and Charlie Stillman decide they are going to fight the case all the way.

The indictment comes down in March of 1972, and Mr. Kaye stands indicted on numerous counts of crime. In Lady Goldie he manifests his intention to the government by one of the Assistant United States Attorneys in charge of the case that he is going to fight this one, he is not going to knuckle under.

So what do they do? In the words of Mr. Stillman in his answer: "The government thought there was another case with respect to Phil and returned the second one, or asked the grand jury to return the second indictment.

"The government asked the grand jury to indict him again?

"A Yes."

This is what the government does. It is a tool at their disposal, and they have the right to do it. They have to get information. That's how they enforce the law. So when they got what they think is a live one, they hit him (indicating) -- like a burp gun. That's what they did with Phil Kaye -- bang. And he didn't go down. Bang -- and they hit him again, and he went down.

He could only take two punches, Phil.

We don't know exactly when he went down, but he continued apparently for a short time afterthe second case, after the second indictment in June of 1972, in a posture of fighting the government until he realized -- and you can bet it didn't take him too long to realize -- but you saw him on the stand, he hasn't got the backbone of a worm, Phil Kaye. The guy is just a jellyfish. I am sure he broke, and he broke fast, and he decided to come in here and make the best kind of deal that he could sometime in the summer of 1972.

Did he -- let's go back a little further. Did Mr. Stillman in March of 1972, when he was attempting to negotiate Mr. Kaye out of the first indictment, tell the U. S. Attorney about Stern Haskell? Among Mr. Kaye's seven or eight crimes that he admits to -- and in my experience you could triple or quadruple that seven or eight -- did he tell them

about Stern Haskell in March of 1972, when he was conducting his first effort to get out? No, he didn't.

What is there about this case that he didn't want to say anything? His deal fell down. No deal.

During the summer of 1972, when he's got two indictments over his head, does Mr. Stillman tell the U. S. Attorney about Phil Kaye's alleged involvement in Stern Haskell? No, he does not. By his own testimony he didn't.

During that period, or whenever it happened that finally Phil Kaye got his deal with the government, did he at that point, when he made a promise to tell the government about all the stock frauds he was involved in, tell them about this one, Stern Haskell? No, he did not. He told them about something called Codies, and he told them about the two he was indicted for, and a couple of others, but he didn't say anything about this one, Stern Haskell.

Why? What is there about this case?

Let's go over to the other side of the ledger, the Sidney Stein side, and see what Sidney Stein is doing at this period.

Sidney Stein is coming to the end of his career of crime in the summer of 1972, or so it seems. I don't believe for a minute he is not out there committing crimes right now. Such people usually are.

3-23

But let's take him on his word at that point. He is coming to the end of his rope. He has a sentence hanging over his head that he is supposed to go to prison for, and this is June of 1972, July, August, when Phil Kaye is having his problems, he is getting deeper and deeper into this quicksand, Kaye, his head is just above the top now. Stein is beginning to make his record for his next use of the insanity game. He is with Dr. Leone in Miami, and Dr. Leone is writing letters like -- and Dr. Leone is a psychiatrist, and he is writing letters in July and August like if Sidney has to go to jail it will kill him; he can't handle it; this is what it takes to push him over the edge.

This is the product of some smart lawyer and some doctor who will sell himself. That's what that is. It is not uncommon, unfortunately, but that's what that is.

And Sidney is down there making his record, getting ready for the final ploy that he is going to pull. And what is building is the war between the United States Government and Sidney Stein that is about to break out in the open any minute.

And Kaye at about this time is beginning to tell what he knows about all of his criminal invelvement and the criminal involvement of others that he knew about, I suppose.

3-24

Along comes October. Still nothing. Still nobody hears anything about Stern Haskell. Sidney Stein puts up the big fight. He can't beat the jail sentence. He goes up in the airplane the night before he is supposed to surrender. He does this suicidal gesture, which the government is just really outrageous about, in my view, and I hope in yours. He commits the suicidal gesture, this big sham, up in the airplane. He's got somebody waiting at the airport in a car. They take him to this sanitarium he has been going all summer gettinghis record ready, and starts his fight. He gets into the sanitarium, and what happens? He doesn't show up the next day. You've got a federal judge in New York issuing bench warrants, you've got a federal judge in Miami issuing protective orders against those bench warrants. You've got war among the federal judiciary.

It is not enough for Sidney Stein to make the U. S. Attorney's office rant and rave,and make fools of the public and the SEC for fifteen years, but he's got the federal judiciary at war now, too, with conflicting orders -- a bench warrant, a protective order.

He's got the marshals outside the sanitarium . You can imagine their fingers bloody trying to claw their way in to get him. And Sidney sitting in there with a big

cigar, I am sure, under the sun of Miami Beach, protected. They can't get him.

The government is salivating. They would give anything for him now. There's a young U. S. Attorneyin New York writing affidavits calling him a liar, a charlatan, trying to get the federal judge in Florida to reverse himself. He's furious. He's got federal marshals down there waiting to bring him back to New York and throw him in jail.

Finally, that gambit runs out for Sidney. But during this time, right then, Phil Kaye has got the free pass of all free passes right in his hand, because the government wants Stein desperately, Stein won't give up, Stein is not cooperating, and, if you believe Phil Kaye, he can bury Stein right then and there by saying "Stein gave me a cash payoff."

THE COURT: Excuse me, Mr. Andrews, I hate to interrupt your summation, but you have been speaking now for an hour and a half. Do you want a recess, or do you want to finish?

MR. ANDREWS: A recess. Thank you, Judge.

THE COURT: We will reeess until three-thirty.

(Recess.)

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THE COURT: Mr. Andrews, you have a half hour left.

MR.ANDREWS: Yes, your Honor.

(Jury present)

MR. ANDREWS: Just to reiterate a little bit-- I am not exactly sure where I was before we left -- during the summer - fall,apparently, and it is unclear, Phil Kaye entered into a deal with the Government, having been indicted twice now, to cooperate in exchange for the promise by the Government that they would make that cooperation known to the judge who sentenced him ultimately, and also the promise thathe would be allowed to plead guilty to less than an entire indictment, and that entire indictment was the Park Avenue case, the second indictment.

Nothing was said about the first, Lady Goldie Bracelet.

His deal, apparently, according to Mr. Stillman, did not affect Lady Goldie.

Mr.Kaye, when he made that deal, obligated himself, and in fact got the benefit of the right to talk about all the stock frauds that he was involved in and that if he did that he would not be prosecuted for any further crimes he revealed.

He was fighting to get that deal. At some time

he got it, we don't know when, maybe later in the year.

Sidney Stein is fighting to stay out of prison.

If you believe Phil Kaye, he could have delivered up Sidney Stein to the Government in another case because he is supposed to have gotten cash from Sidney Stein. I don't know whether he did or didn't, but I suspect he did.

He didn't say anything about the Stern-Haskell case, never mentioned it.

Stein, after the federal judge in Florida has had an opportunity to consider, reverses his decision, withdraws the protective order and Sidney Stein is returned to New York and the U. S. Government prevails, at least, but Sidney Stein held them at bay for a while.

He gets back here and he is sent not to prison, but to a hospital, prison hospital. There is a very big difference-- a psychiatric hospital.

During that period, the Government that had been fighting so hard to get him back, during that period between October 15th or so, when he was supposed to surrender and January 31 of 1973, Sidney Stein capitulates, the Government capitulates and there is a meeting of the minds.--strange bedfellows -- but they are there together, with a contract, and that contract is that Sidney Stein in exchange for telling the Government everything that he

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knows about every stock fraud that he ever engaged in or anybody else he knows of ever engaged in, his exposure to imprisonment would be definitely limited, and Sidney Stein then went ahead to reveal some 250 stock frauds.

Remember his deal was for stock frauds, manipulations, stock swindles.

He went ahead to reveal some 250 such involvements that he had had over the past ten or fifteen years, whatever it was, and he did not mention Stern-Haskell. That is January of 1973.

He continued not to mention Stern-Haskell, even though on January 31, before Judge vanPelt Bryan, a federal judge, he said he would cooperate and tell it all,about all the stock frauds, he held back Stern-Haskell.

Why did he do that? Well, I am a little premature. How do we know he held back? We know positively that he held back because in July of 1973 he appears as a Government witness in the case of United States of America v. Quase, and who, lo and behold, but Charlie Stillman,the lawyer, winds up representing a defendant in the Quase case and cross-examining Sidney Stein, the Government witness, and what does he ask him:

"Q What was your involvement in Stern-Haskell?"

And Sidney says: "I take the Fifth Amendment.

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I refuse to answer on the ground that my answer will incriminate me."

Look at this connection. Stillman, nice little club, who represents Phil Kaye, who has made a deal to tell it all to the Government but who has not told about Stern-Haskell, appears in court cross-examining Sidney Stein who hasn't told the Government about Stern-Haskell and Stillman asks him about Stern-Haskell.

I put it to you, ladies and gentlemen, that if Charlie Stillman knew at that time what Sidney Stein's answer would be, if he answered truthfully, he could not have been in that courtroom, he could not have put that question, because if Sidney Stein's truthful answer was:

"I paid money to Phil Kaye to tout the stock," and Charlie Stillman was representing Phil Kaye at that time, Charlie Stillman was on the horns of a dilemma known to us in the profession as conflict of interest and it ought to get him disbarred, if he knew it.

The conflict of interest was he could not effectively repesent his client in the Quase case because he could not effectively cross-examine the Government's star witness, Sidney Stein if he didn't ask the Stern-Haskell question.

If he asked the Stern-Haskell question, knowing

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what the answer would be if Stein told the truth, as Stein would have you believe the truth, then he was burying his other client, Phil Kaye.

I don't know what it suggests. It certainly suggests something beyond the simplistic spoon-feeding we have been getting at this trial.

It is for you to decide what it suggests. To me, it is sinister. To me, somebody is lying.

Sidney Stein takes the Fifth on Stern-Haskell. Why does he take the Fifth on Stern-Haskell in July of 1973 whenhe has a promise from the United States Government that every stock fraud he tells them about will be absolved, go thy way, your sins are forgiven you. Come into the confessional here, the federal building, and tell me about it, and youare free.

But he doesn't, because it is not a stock fraud. That is why he didn't tell them. It was income tax evasion to Sidney Stein. It was not a stock fraud. It never was a stock fraud.

These men didn't do anything wrong. They didn't violate the law. This is all contrived for this trial.

You have heard the testimony here. You know in your hearts whether they did or didn't. These men never took a kickback. Every ounce of evidence points to the

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fact they did not take kickbacks, they worked a fair and honest market.

But what is Sidney Stein's dilemma? He has in his pocket $160,000 or better that he took down from his Stern--Haskell dealings. He got all the money and never paid the taxes, and it wasn't a stock fraud so he couldn't be absolved by virtue of his deal with the Government.

So he couldn't tell the Government about Stern-Haskell when he related his 250 swindles because it didn't cover tax evasion.

The IRS is a very independent force and they don't get manhandled by the likes of an anxious young U. S. Attorney, not to the tune of 158,000 bucks they don't.

Sidney Stein then leaves that courtroom, and there a U. S. Attorney in that courtroom. Sidney Stein said, "Well, it was a hung jury in the Quase case. Well, it wasn't. Everybody was acquitted by one and that was a hung jury there.

The U. S. Attorney is livid because he had been told by Sidney Stein -- "You told me all of it" and suddenly he finds himself in a courtroom with his star witness standing up there taking the Fifth Amendment. The star witness that has come beforepeople like you good people and say "Believe him. Convict all these people,

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Quase and everybody else, ignore the fact that he took the Fifth Amendment. Convict him."

Needless to say, those good people didn't and needless to say that young U. S. Attorney, whoever he was, probably came close to manslaughter when he got out of the courtroom.

I can paraphrase it, I am sure he said it - I was there once, I was a prosecutor once -- "You lousy creep, you told me and then you go in that courtroom and you take the Fifht?"

Stein's criminal mind is racing like crazy. I am not sure exactly how it happened at this point, but I do know nobody ever mentioned Stern-Haskell.

Stein has a deal that can absolve him of Stern-Haskell. Kaye has a deal thatcan absolve him of Stern-Haskell. Stein is in a dilemma. A young U. S. Attorney has him back to the wall. He will kill him, if he can, and you know the power of the Government, they can turn indictments out like Ford stamps out cars, and they can make you fight indictments until you are gray. They can break you financially. They drag you through the civil courts for two years and when they bust you there and drag legal fees out of you and beat you senseless there, turn your life upside down with a civil trial, they can drag you

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into this courtroom under indictment and break you there, too.

When they are done you may walk out a free man but you have been fighting for five years, you have no money left, you have not seen your family for two years, your job is gone, your life is upside down -- that is what they can do to you, in the name of justice.

If they decide you are a bad guy and deserve that kind of treatment, and they may be acting through noble motives, but if they are wrong, the injustice is overwhelming.

Sidney Stein's mind is racing, racing, he is brilliant. The doctors say he is crazy but he has it together, and his mind is racing, he didn't know how to get out of the mess -- he just walked out -- and there is a bunch of people the Government wants convicted -- he has admitted that he lied to Judge Bryan, admitted that he lied to a prosecutor, taken the Fifth Amendment when he made a deal to tell all.

He says, "What am I going to do? I have $158,000, I didn't pay tax on it, I have to get it out of my pocket and into somebody else's fast."

Then and only then do we discover that Stern-Haskell is a criminal case, four years later.

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Sidney Stein, the manipulator of people, the best of them all, sees that he cannot live in this posture, he can't survive-- he is not going to pay the money, you can bet on that. The IRS will whistle for their money but he won't give it to them,and he will put these guys in jail, but he won't put up two cents for the tax. He beats the tax magically, masterfully.

What he says is: The money came in but he didn't hold onto it, it went to Rubinson, Feiffer, out to Wax, out to this guy, that guy, and "me, poor Sidney Stein, I gave Wax and Levine $50,000 and I only got $18,000."

Can you see it? Everybody gets 50 but Sidney. He gets practically nothing.

So that is how he contrives to get out from under that mess. He tells the Government that this was a stock fraud all along, that whole civil trial nonsense, you guys have been wasting your time, this was a criminal case "because all those guys believed the law was against them, they believed that they were not entitled to do this thing," and "I paid off the brokers in New York, split the take with Rubinson and Feiffer and the net amount to me is peanuts, but those guys got the big money, I am the minnow, they are the whales."

Sidney has another criminal case to give with

eight more bodies and if he is believed it will help him at the time of his sentence, he doesn't have a tax burden, and he said, "As far as I know, I got a free pass from the IRS, my taxes are paid up."

He is sitting under a palm tree with his million and a half in cash, clipping his coupons, with the sun shining on him, laughing down his nose at all these guys, and you and me and this Court, and he beat us all and the U. S. Attorney and everybody.

He has a chauffeur-driven, whatever it is, waiting for him and a couple of guys here can't even afford a lawyer.

It makes me sick that this could happen. It is hard for you to believe because you are good people and you don't live with this seamy kind of individual, you have never experienced what this kind of a nut can do, dedicated to a life of crime.

Well, he says to Phil Kaye, and you can bet they were together, because they worked together for a long time-Stein slips in his testimony more than once and you have the speech about "Not for any length of time."

"Before you met him at Lockwood, did you know him?

"A Not for any length of time.

We have another point where he calls him Phil.

Stein in his testimony about the vault said, "I took him to the vault in my building" -- this total stranger, and he changes it and says, "No, the money was not in that vault, it was over at Manufacturers Hanover, six blocks away."

Read the testimony.

I have only twenty minutes left and I won't read it. He sayd, "I took him to Manufacturers Hanover where I have the big gox with the money," and then Phil Kaye comes and describes the vault:

"Q How big was it?

"A About 18 inches high.

"Q How long was it?

"A Two feet deep."

Measure a file cabinet drawer. It is exactly that size.

They got their incidents confused. Kaye has been to that box before plenty of times. I am sure of it. What happened? I am sure Kaye at that time when Stern-Haskell was being done and Stein had his piece of stock and was selling it out and trying to encourage buyers, there is no question he had Hector Benante working in the street, not working for Stern-Haskell, but working to promote the

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stock.

Kaye told you that, Stern told you he turned him down, he had Kaye doing public relations, a small pittance to pay.

He probably gave Kaye $5,000, $10,000, $20,000 but now Stein is in big trouble. He has togive up the case.

I don't know how it went. It is pure hypothesis on my part and speculation; I will throw one out.

He probably said to Kaye, "You are going down. Youare in trouble. You made a deal for all your stock frauds. You didn't tell them about them and I am going to tell the story, say you got paid."

Your way out is to say you split it. Make yourself from a minnow -- from a whale down to a minnow, take the money out of your pocket and say you gave it to somebody else." What does Kaye testify to here? Aside from being destructive of my clients, if you want to believe it, this guy without a job, whose credibility is nil, has three indictments to battle out from under -- he gets the opportunity which no other defendant gets in ordinary circumstances, he gets to climb up in that chair and sit in front of Judge Motley under oath and say, "I am just a small fry, I got $1500. They are the big guys. They got the big money. I just carried it down to them" and then Charlie Stillman, who comes in here and uses language like "I think I would be comfortable with"-- it is my best recollection with 1972" -- Charlie Stillman is every mindful -- he doesn't know when he was told for sure, so he can resolve that doubt and the critical thing we told you from our point of view is that he was told after Kay was in big trouble, but he can resolve that doubt in favor of Phil Kay for what reason? Phil Kay is his client. Phil Kay is going to just as sure as the Sun is going down tonight some day stand right here before Judge Motley herself in this courtroom, with Phil Kay, who has three convictions, I think, and have to tell Judge Motley that in his opinion, with

every ounce of sincerity he can muster up, Phil Kay shouldn't go to prison.

Phil Kay was just a tool here. You saw that from the witness stand. He didn't do anything except carry the money down and he was paid peanuts for what he did, you are going to send him to jail, Judge, and Judge Motley is a human being and she may be persuaded that this tout --

THE COURT: Mr. Andrews, you are not permitted to tell the jury what I am going to do with any defendant in any case.

MR. ANDREWS: I am just suggesting what a Court may do, your Honor.

THE COURT: Well, that is improper.

MR. ANDREWS: I am sorry, your Honor.

A Court may, and Judges are human beings, as we all are --

THE COURT: I have asked you not to comment on what I may do inany case because you don't know what I am going to do and you are not to speculate to the jury as to what I am going to do.

MR. ANDREWS: Yes, your Honor.

What I would hope, and my sense of justice cries out, that perhaps you, by your verdict, will tell the Courts and the U. S. Attorneys and the Government "I love th

country, I love our laws, but this can't go on." By your verdict tell them you won't be a part of it.

Let's look again to some of the external evidence to see if Stein's story holds water, Kaye's story holds water.

Some witnesses said, "I could always call Stein and get him at Lockwood, giving the idea that he was there a lot. They practically put him in an office at Lockwood. So if you are to believe that, why did Phil Kaye, a total stranger to everybody in the case, get sent to pick up money from Sidney Stein to bring it back to Larry Levine to split with Walter Wax. That is a little like sending a monkey to the store to bring bananas home, isn't it? Why would these people add Phil Kay as another witness, if Stein isn't here now, he will be here in two hours -- why? Because, as somebody pointed out earlier, in that way they can get the money into Rubinson's hands for a minute. So far will they reach. They can take the money, take it upstairs, have Rubinson touch it and he is now part of that part of the conspiracy too. Rubinson took it, looked at it, handed it back, and then it was carried downtown. That is the function of that part of the story.

When Stein testified here, he wouldn't go that far to say that he knew Levine got that money or that Wax

got that money. He said,

"Q It is your testimony today that Phil Kaye went to get the money from you and bring it to Levine?

"A I don't think that that was completely clear in my mind then or now."

He won't pin himself down to anything because he is a liar and he is not going to get pinned down to anything I might controvert. He will say April, May, June, July, 5, 10, 15, 20,000, when he goes into his bank vault he doesn't have to sign a slip. Did you ever get into a bank vault without signing a signature card?

"Q Then you cannot testify under oath that Levine told you Kaye had given him the money, is that correct?

"A Yes."

When pressed, he says Levine never told him he got money from Kaye. When you heard his direct testimony it sounded like Levine called him and said, "Thanks, Sidney They money just got here."

"Q It is not your testimony that Levine told you Kaye had given him money?

"A Yes.

"Q As a matter of fact, you don't know whether Kaye kept all the money or not, do you?

"A I don't. I don't know.

"Q As a matter of fact, Kaye may have kept all the money you gave him, isn't that correct?

"A That's correct.

"Q You never gave any money to Mr. Levine, isn't that correct?

"A That's correct.

"Q You never gave money to Mr. Wax, isn't that correct?

"A That's correct.

"Q And you didn't tell the grand jury that Mr. Wax admitted to you that he had received money, isn't that correct?

"A That's correct."

You remember when he took the stand on direct he said Wax told him three different times -- I want to read it, it is like a child's sing song, talking about Wax," he always told me he had received his share and that he was happy and satisfied and that he was going to continue to sell the stock as he was doing."

That was his direct testimony, Wax admitted to him he received money.

In the grand jury,

"Q Was it your understanding that Wax was supposed to share the payments that were being made with Levine?

"A That is the impression I got, but I don't know what they did between themselves". He has already admitted he doesn't know whether Levine got any money and now he says he doesn't know what they did between themselves."

"Q What was your impression based on?

"A My impression was that they were in business together.

"Q Was your impressed based on something someone said?

"A Well, I don't recall any specific conversation where anybody said anything, but it was my observation from the relationship between the two people that they were partners and that they had some business interest together although they were in two different offices."

That got Walter Wax indicted in the grand jury. It wasn't good enough to work here, so he said, when he got here, he put a confession in Wax's mouth, once, twice, three times. Impressions might work in a grand jury, but they don't work here, and Sidney knows that, he has been around.

The Government doesn't trust Sidney Stein or Phil Kaye. Neither of them have been sentenced on the cases on which they pleaded guilty to one count of the indictment. It might have been a little more convincing if the

Government before they came in here to testify let them go before the Judge or Judges, make the recommendation, or make the cooperation known to the Court and let them get sentenced. The Government won't do it, not until they get up on that stand and do their thing and deliver. Only then will the Government go into Court and let them be sentenced. Sidney Stein was supposed to be sentenced in the last few days and it was put over, the same with Phil Kaye, and it will be put over until the case is finished and then the Government will go in and tell the Judge that these fellows cooperated, but only then.

Why should you trust them if the Government won't?

If you were the Government in this case -- play prosecutor for a minute, and your whole case was based on the testimony of Sidney Stein and Phil Kaye, what would you do? If it was uncorroborated as far as the payments goes and virtually uncorroboratable as far as the payments go, who can prove they gave you cash, how can you prove they didn't give you cash unless you are on two separate planets with no means of getting together? If I wanted to prove Sidney Stein and Phil Kaye were worthy of belief, I would seek to corroborate some element of their testimony, something.

For example, Sidney Stein sat up there deliberately running off at the mouth how Levine said he would get other brokers interested in the stock and get other people to make markets and I think he mentioned Barroff and Company. Do you know why? It turns out that Barroff and Company did a substantial piece of the trading. So that is a safe one. If I were the United States Attorney and, as Mr. Wohl said yesterday, the financial community is ten blocks away and then they reach all the way to Florida and they reached all the way to Florida and brought people up to say "I bought the stock, I sold it, loss money" -- if I could have reached out to Barroff and brought him in and Barroff said, "Yes, Larry Levine put me in the stock and said, 'get in there and make a market,'" do you think if I was a prosecutor I wouldn't have brought him in? I am going to ask you for the first time in my summation -- Mr. Wohl asked you hundreds of times -- to draw an inference. I have talked to you about facts, solid facts, on paper. I am going to ask you to infer as reasonable human beings that if somebody can help himself, can help his position without too much effort and if doing that, bringing Barroff in here would have helped corroborate Stein, would he do it, and I ask you to infer if somebody doesn't do that, something that is so easy to do, something that would in a

moment add so much more credibility to what Stein said, when it wasn't done and it was so easy to do, I am going to ask you to infer based on your common sense, that if Barroff were called in as a witness, Barroff would have said, "No, Levine did not put me in the sheets" and you can bet Barroff was talked to. He is ten blocks away. Look at the people they talked to. Barroff was not called. There were 9 other market makers in these pink sheets. Where were any one of them to corroborate Stein by showing that Levine had put them in the pink sheets? None.

Remember, Phil Kaye's testimony where he first got on the stand and said, "I got paid off late April, early May" and then he was asked again, and late April, early May, and the facts are that the charts show no stock was sold until May 22 or so, 20, 21, 22. The clearing date is five dates later. Stein, from the sales of his nominee stock wouldn't have realized a penny of it until June. So you mean to say he paid Kaye and Levine for stock money from which he never had in his hands yet? What did Kaye do? He went upstairs that night and somebody pointed it out to him or it dawned on himself, he saw a piece of paper and he changed his testimony.

Let me make one more point, the final lie, the most awful kind of lie that came out. Stein is on the stand

and he says this, "Yes, Levine and Wax got a piece of every share sold." He was asked as a parting blow by the prosecutor, "Did they get a kickback or pay off on the B'Noth Jerusalem stock that sold for a dollar and a half or $2 at the end" and he said, "Yes, they got in on that too" and that is in the record. Stop and think for a minute. If the prosecutor had looked, had gone and talked to the old rabbi, he would have found out a piece of evidence, if he looked with his common sense he would have found another piece of evidence. The stock had an average price of about a dollar and a half to the B'Noth Jerusalem. That is the 28 or 30,000 shares at the end. It had an average selling price of about $2. Let's say the maximum profit to B'Noth Jerusalem was $15,000 and they had to pay brokerage commissions on that, reducing it further. Sidney Stein said Levine and Wax got a piece of that. The old rabbi came. You saw him. He is a man of God this old rabbi. He is old. He has dedicated his life, it would appear, to the pursuit of God's work. He is darn close to meeting the God he believes in, and he got up on that witness stand -- he can't be far away, he is feeble, he is old, he works for a girl's school -- he got on the witness stand and said, "Every penny that I made I sent to the school."

Would he lie for Sidney Stein? No, he wouldn't,

and he was discoverable long ago. How could Levine and Wax have gotten a pay off on that stock? Please tell me, somebody. The prosecutor in his rush to accept on its face, every word out of that rotten perjurer's mouth, that psychopath, threw him on the stand and let him make that wild remark, sure he got paid on that stock, when all he had to do was go to Brooklyn with somebody who could speak Yiddish and talk to the rabbi and the rabbi would have told him the profit went to the girl's school, and I pushed him and he said, "Every penny."

Stein, again an absolute liar. The disgusting part is he could have been proven a liar on that one, on the rabbi's thing, on everything else I pointed out to you, and at some point in time somebody with a little bit of judgment and a little bit of human compassing could have said, "Wait a minute, am I going to put these guys through this ordeal on this kind of thing?" But they did it anyway. You sat here and you watched it.

THE COURT: Mr. Andrews, your time is up.

MR. ANDREWS: I am finishing right now, Judge.

I ask you to aquit them, to send them home too, and by your verdict to tell this court and tell this Judge and tell this Government whom we love, and we all do, misguided as it might be sometimes, and tell this system it will not endure the likes of this. Stamp it out.

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Thank you, ladies and gentlemen. Thank you, your Honor.

* * *

AFTERNOON SESSION

1 p.m.

THE COURT: Ladies and gentlemen, at this time the defendants and defense counsel, having had an opportunity to sum up, the Government will now proceed with its rebuttal.

MR. WOHL: Your Honor, counsel, Madam Forelady, ladies and gentlemen of the jury, you have been listening over the last two days, just about, to defense summations, which culminated this morning in a summation by Mr. Chester which the Government would submit to you, ladies and gentlemen, was nothing more than a continuation of the fraud that was commenced in 1969.

You recall I told you that there are a number of objects of fraud and one of those objects is to avoid detection and when detection has occurred, that means that the fraud has started to fall apart, ladies and gentlemen, and the Government submits to you that the only way that it appears that Mr. Chester can keep the fraud together is by a continuation of that fraud. I would submit to you that what you heard today in large part, consisted of many facts or assertions of fact not in evidence. Papers were bandied about that are not in evidence. You have been told many times that evidence comes from one place, ladies

and gentlemen, from the witness stand, where the witnesses testify. You have been told a number of times that you are not to consider other statements that are made that do not constitute evidence or papers that have not been received in evidence, matters that have not been subjected to cross examination and are not under oath.

The Government submits to you, ladies and gentlemen, that if you look at what the evidence was in this case, what the evidence is in this case, you will be able to focus your attention on the real issues. You will come to the conclusion, ladies and gentlemen, that indeed there was a very crude fraud perpetrated here that was perpetrated on a number of victims and that perhaps one of the reason why you have heard a number of jokes is because there are not any facts, ladies and gentlemen, there are not any facts at all to dispute that fraud but just a bunch of jokes.

We started out asserting to you or suggesting to you two fairly fundamental propositions. One was that Stern-Haskell stock was marketed to the general public through a public market without any significant disclosure whatever, and the second one was that that market was created and manipulated in a manner so as to put that stock at an artificial price, taking virtually worthless stock

and forcing it off on unsuspecting investors for massive fradulent prices.

Now, a number of the defense counsel have suggested, well, they really didn't get it up very high, only up to around three or $4 a share. When you look at what this stock was, ladies and gentlemen, the Government submits to you that $4 a share is a pretty outrageous price and everybody knew it in 1969, the people who bought it in 1969 sure know it now and so does everybody who has been sitting in this courtroom.

Let's do a little arithmetic: You recall it was 200,000 shares that were going to be trading in the public market. That was 20 percent of this company, wasn't it? Mr. Stern testified to that.

You recall that the price got up over $4 a share. You remember that, certainly, and it was stated a number of times.

Let's do a little arithmetic: $4 a share, 200,000 shares -- that is all that is in the public market, you recall -- that gives you a cool $800,000, that 20 percent of this company is worth. That is not even the whole company. You have Stern and Haskell sitting over there with big boxes full of stock. 20 percent of the company in the public market, if any public investor wants to buy

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it, is worth $800,000.

When the audited financial report comes out that the public investors had a right to see in the first place, what does it show? It shows the entire company, a hundred percent of the stock is worth that? Minus $3,205. It is in a deficit situation.

Well, they say, "We didn't know that so that excuses us." The Government's first proposition is that that doesn't excuse you at all because you very well knew the public was entitled to know that in the first place and you can't go around selling stock like that with these phony figures and say "Well, gentlemen, we didn't know."

Let's look at the figures they did have. Did that show 20 percent of Stern-Haskell was worth $800,000? Did those figures show that, ladies and gentlemen? Well, you might have guessed: They don't show it. They show that the total capital of Stern-Haskell, March 31, 1969, from a defense exhibit, was $40,000. That is by their own inside unaudited figures. The whole company is worth $40,000, or the stock of the whole company, and that is down and it is even a higher figure in 1968, something like $57,000.

In addition, ladies and gentlemen, you recall it was certainly established that when the audited figures

came out they showed that the company wasn't getting any better either. It may have been selling $10,000,000 worth of cars a year, but it was losing money.

So every time you sell another car, you have lost another dollar, haven't you? That is a great company we are off selling to the public at $4 a share.

Ladies and gentlemen, also I suggested in my first summation that to the extent that anybody was telling you that this company was going to get a lot better because of these acquisitions, that that constituted a bunch of pipe dreams of Stern and Haskell, and Mr. Fischetti took exception to that. Let's look at the record, at what is in evidence.

Let's not fantacize about what we could write up or imagine. First of all, Mr. Stern testified that this Cord proposition was rejected by Stern and Haskell themselves. So that wasn't something that would have made any public investor happy, that wasn't something to get the public investors any of their money back.

What about the Cox Broadcasting deal, was that on the fire in June, when everybody was buying Stern-Haskell stock at $4 a share? No, it wasn't, ladies and gentlemen. The letter, Exhibit 115A, written July 14, 1969, that the defendants Wax and Levine so proudly produced, of course

after they have sold quite a bit of the stock, talks about the Cox Broadcasting deal. However, Mr. Stern testified that the Cox Broadcasting deal at that time, at the time that that letter was written, was nothing more than one telephone call -- excuse me, a telephone call and a letter. That is all that had been done. It wasn't any great deal. It wasn't anything that was going to earn anything to the public investors.

"Q Now, drawing your attentior to portions of that letter, if I may, the paragraph, the first paragraph, the fifth paragraph down, that paragraph which reads as follows:

"The reconditioning business is in its infancy. There are, at this time, two major reconditioning centers in eastern United States -- one of these companies is a very interesting possibility as far as acquisition for Stern-Haskell, Inc. We have been negotiating for a few weeks with the Recon Center and we feel we are not too far away from a meeting of the minds."

"That's the testimony that you gave previously with reference to this reconditioning center, is it not?

"A That is correct.

"Q That's Hatfield, is that the way it is pronounced?

"A Yes.

"Q And page 2, the second paragraph:

'On July 2, Mr. Stern of Stern-Haskell, Inc. contacted Mr. Kirkland and Rule of the Cox Broadcasting Company.

"Q Who did you talk with at Cox?

"A Mr. Jake Rule and Mr. Kirkland.

"Q How many meetings did you have with them?

"A No face to face meetings.

"Q This was all on the telephone?

"A Conversation and letter.

"Q A letter?

"A A letter."

Then he goes on to say there was never any agreement on that proposition.

Also, what about the Hatfield deal, ladies and gentlemen, and that is the only one left now? The Hatfield deal we were told in evidence by Mr. Stern, that negotiations had been going on since 1968 and nothing had happened on that.

The Government submits to you that certainly the public investors were entitled to know that this negotiation had been going on since 1968, there is nothing in writing and nothing -- there is no writing on it, nothing firm on it and if any public investor wants to invest in

something that is that much of a pipe dream, then the investor should know that is what he is getting into.

Well, Mr. Fischetti said, Mr. Stern testified that the Hatfield deal fell through because of the SEC investigation. Well, let's scrutinize that testimony just a little bit. What do you think the people from Hatfield would have said if they had a copy of this audited report that says the stock Mr. Stern and Mr. Haskell want to give them is stock that is really worthless? What do you think they would have said if they found out the company wasn't really making money the way they said it was but it was losing money? The Government submits to you that might have had a rather significant impact on anybody wanting to take stock for a deal with Stern-Haskell.

What about, ladies and gentlemen, when the stock went down to a dollar a share, 70 cents a share, do you think that might have had an impact on businessmen who were being told they should take a big block of this stock in return for giving away part of their company? The Government submits to you that all you have there is a situation where Stern and Haskell wanted to give some of this same overpriced, over valued stock to some of these other businessmen and the reason that fell through, you may well find, could be because of the fact that they either

found out about it or the SEC was warning them about the fact that this is overpriced stock. Is this the big, bad, SEC fowling up some business deal or is it telling businessment that they are about to give away part of their company for over valued, over priced, stock? The Government submits it is the latter and that is about the only evidence you can find on that subject in this case.

Mr. Fischetti complained about the fact, and so did Mr. Chester, about the fact that I called this company a garage. On page 2223 of the record, that is what Mr. Stern calls it;

"Q And that was a garage, is that right?

"A That's right.

"Q And was it leased or owned by Stern-Haskell?

"A Leased.

"Q And thereafter you moved?

"A That's right.

"Q To where?

"A 1700 Jerome Avenue.

"Q Is that also a garage?

"A Yes."

A little later on.

"Q I don't think the Judge will allow you to do that, but I will interject if I don't understand.

"A All right.

"We have a garage in the Bronx" ---

And then he skips on ..

"Part of the downstairs garage has got a showroom".

In any event, ladies and gentlemen, we submit it is not one of the largest car manufacturers of the western world and doesn't justify any kind of price of $4 a share in the public market for stock that is 20% of the company.

Also, ladies and gentlemen, Mr. Fischetti complained when I said the testimony was one of the reasons these men wanted to go public was because they needed financing and they wanted to use some of the money that they obtained from the public in order to assist in sovling some of the cash problems of the business, and I referred to Mr. Hochen's testimony: They had cash problems and Mr. Stern's testimony.

Mr. Fischetti says that is not true. I think he selected part of the record. Let's look at page 2032.

"Q Did you discuss why you might be able to raise greater financing through a public offering?

"A Yes, because the public would be a participant in the stock of the company, and in the profits, and in

return for that the company would receive a certain amount of dollars that we could use for investment."

Skipping some on 2035:

"Q I believe you have told us that the major precipitating factor for these conversations was capital financing?

"A Definitely."

Later on, the same page:

"Q Did there come a time when you discussed the mechanics of what going public would be?

"A We really never got too deep into the subject because Mr. Haskell told me that it would probably cost upwards of $50,000 to get out a prospectus on the company, and we were in no position to absorb that kind of an investment at that point."

This terrific company can't even scrap up the $50,000 that it takes to let the public know what kind of stock it is buying.

We suggest to you that is somewhat symptomatic of the company we are talking about and the kind of pipe dreams we are talking about when we are talking about all these closed circuit television sets and everything else they are going to put together.

Later on, on cross-examination by Mr. Chester,

page 2184, Mr. Stern says:

"Q What was the advantages in your mind for Stern-Haskell to be spun off and become a public company and its stock traded?

"A It would in effect make Stern-Haskell a public vehicle and through that we could take our treasury stock and sell it or pledge it to banks and institutions and receive the kind of financing that we would need to expand the business.

"Q Now let me ask you this, if this is a fair statement:

"If your stock was trading on a regular basis of say, three or four dollars, then you could-- could you possibly acquire other companies for stock?

"A Yes.

"Q Could you possibly borrow on this investment stock?

"A Yes.

"Q So this was the advantage to you to take Stern-Haskell public?

"A That's correct."

Page 2233, cross-examinationby Mr. Fischetti:

"Q What was the reason that Stern-Haskell wanted to go public?

"A Financial.

"Q Would you consider that the main reason?

"A Well, when I say financial, I mean it in the context, of course, that my letter that was exhibited here can portray. Mr. Haskell and I both had ideas of expanding our business into related areas and sohave a more profitable business and we would need considerably more money than we could borrow from a bank to accomplish this.

"Q Wasn't the primary reason to acquire other companies by virtue of acquisition stock?

"A That was part of it.

"Q Would you say it was the major reason?"

And then there is an interjection by the lawyers:

"A I think it's all part of it. I wouldn't say" --

"Q But you weren't interested, were you, at that time of taking public money from the sale of stock in order to use in refinancing? That wasn't your purpose, was it?

"A Well, if that were the case, that is what we would use the money for."

Mr. Fischetti may have gotten him to say something else at another point, but it is obvious Mr. Stern was testifying one of the major reasons they were going to go public was that they wanted first of all to use the money

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themselves.

When we went to the spin-off mechanism and found out they couldn't do that, they still wanted to obtain money as a result of thepublic offering, possibly by financing through banks using the stock.

Mr. Fischetti also complained about the fact that I said Stern has had bounced checks and I don't believe I said they were bouncing all over town, but I referred to the fact that they had bounced checks.

On cross-examination by Mr. Fischetti:

"Q Did you have a problem at that time with lack of cash because the checks that you were issuing out of town by the buyers were clearing faster than the checks that you were getting in when you were selling the cars?

"A That's true.

"Q In other words, you would sell a car, you would purchase a car and your check wold clear in two or three days and resell the same car and the check that yougot in may not clear for seven or eight days?

"A That's true.

"Q So many times during this area you were dealing in area of uncollected funds?

"A Correct.

"Q And that was one of the problems?

"A That's right."

Page 2524 they are talking about the interest charges Stern-Haskell has to pay and Mr. Fischetti -- I am not sure who asked these questions --

"Q That $37,000 would be interest on loans, right?

"A Yes. Not necessarily on loans, by the way. That would also reflect the bank's charge for handling uncollected funds."

It co-ld be that the bank was not actually bouncing the checks but was paying them on overdrafts, but it is indicative of what we contended all along, you had a company that was short of cash and was not in any kind of great financial position.

Also you recall Mr. Fischetti referred to this great network of salesmen all around the New York area.

Mr. Stern told us about that, too, and asked about employees, page 2030, he said:

"A There would be Mr. Haskell and myself. There would be an office manager. A floor man. A porter, and between two or three female clerks.

"Q In addition to the salaried help during that period, would you have any other buyers working for you?

"A Yes.

"Q And on the average, how many?

"A Approximately 8.

"Q What would they do?

"A They were commission people that would cover particular areas, generally within a 200 mile radius of New York"....

The Government submits that is hardly a network Mr. Fischetti is telling you about.

Consequently, ladies and gentlemen, we would submit that the basic picture we gave you of this company throughout the trial is an accurate picture, it is a picture that these defendants either knew about or should have known about throughout the entire transaction and it is a picture that the public investors were entitled to know that they didn't know about and the reason they didn't know about it was because theywere not given the proper information and the requirements of the law were not satisfied.

What do we mean by that? We mean it was unregistered and, ladies and gentlemen, we submit to you that it is very clear, if anything had been established in this case, it is that this company was required to be registered before it could be traded to the public, and not only that, it has been very well established that certainly these defendants knew that, they were told that, and certainly if any defendant knew it, it was certainly Mr. Chester.

Now, he is telling you about the 1969 release and how he says that that changed everything and then he went out and wrote a letter saying the SEC had issued some kind of proclamation.

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The fact is, that was not an SEC proclamation, it was an SEC release and, in addition, it was not any new information to Mr. Chester.

Did you hear from Mr. Chester telling you why he had trouble understanding Mr. Germaise's letter?

Mr. Chester is a lawyer and he can understand, the Government submits, what we read to you earlier about how if this is a scheme to avoid the registration requirements that then it is certainly improper.

You recall Mr. Stern was asked that when he was on the witness stand and he said he could understand that this part about good faith means if you are not in good faith and just trying to sell the stock and avoid the registration requirements, you can't do it, it is illegal.

What about the letter from Marc White, May 16, 1969? There wasn't any answer to that, was there, ladies and gentlemen? There was some kind of suggestion by Mr. Chester, totally facts not in evidence, nothing put into evidence on that score, but the evidence is Mr. Chester got that letter and after he got that letter, he continued to operate with the Mobile Homes deal, which then aborted later on, but not necessarily because of this letter.

He also continued to do the Diston deal, another

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spin-off, and even after that he was selling Stern-Haskell stock just as fast as he could sell it, as fast as the public would buy it, ladies and gentlemen.

Also, ladies and gentlemen, there has been a sort of red herring thrown in here. Mr. Chester said, "Well, the Government has never taken a clear position: is a spin-off legal or illegal?"

I think it is clear, from the outset of this trial, ladies and gentlemen, that there is no fixed rule. The human mind can bthink of an enormous number of ways to avoid and evade and get around any legal requirement such as registration of stock.

The Government's position from the beginning has been that there are some kinds of spin-off situations which may be proper. That is what it says in these two letters, but it says there are other kinds where it is just a scheme to get around the registration requirements that are not lawful and, consequently, the SEC cannot put out any kind of blanket statute that says: All spin-offs are illegal;because there are certain times when people are entitled to do that, when General Motors wants to get rid of a battery division, they can spin it off,and so what the SEC requirement has been, and what Chester knew about, what everybody who saw the Germaise letter and the White

letter knew about in 1969, before many of these transactions occurred, was that if it is a device to avoid the law, it is illegal, and if you want to go sell stock to the public without going through those requirements, it better not be such a device.

What did Marc White say? He said "I cannot caution you too much."

Does that sound like he is saying "Maybe"?

He is saying: Sure the law is unclear, but he is saying, "If you have a scheme to avoid the registration requirements, you are not in the fine line, don't do it."

He is saying: You better find another business purpose for this type of operation, if that is what you are going to do, rather than just using it to sell stock to thepublic.

In this ten to twelve hours of defense argument, did you ever hear anybody suggest to you one other purpose of this whole arrangement other than to sell stock to public investors without proper information?

Did you ever hear one? You bet you didn't, ladies and gentlemen, because there isn't any.

Did you ever hear anybody say that National Ventures and Mr. Chester down there in his house in Florida had any other product, had any other service other than

avoiding the securites laws for which they were being paid very handsomely?

Did you ever hear anything like that? You bet you didn't.

That is all they were doing, exactly as I proposed to you at the beginning of this before we heard the ten to twelve hours of defense argument, and nobody, nobody had the nerve to suggest to you, even imply anything different, because they couldn't, because it is altogether obvious that this scheme was exactly what Mr. White said was illegal; it is exactly the scheme that Mr. Germaise said you cannot do, that that is in bad faith.

Thatis exactly what it is, ladies and gentlemen, and these defendants knew it.

Thatis why you don't find in the SEC release, even after the fact-- they don't say: All spin-offs are legal. They say we have to look at each one, but if it is a scheme to avoid the registration requirement, it is illegal.

What did Mrs.Nelson say? They seemed to get comfort from that. She didn't say this was something they knew about all along, that the SEC was approving. She said it was a new technique, new device, and the SEC had to look into it and that is the problem.

These people can figure out all kinds of ways, the securities laws, the tax laws, and everything else.

If it is a device to get around the law, it is illegal and they know what the law is.

Somebody suggested there were Harvard lecturers saying what the Stern-Haskell deas was, was okay.

That is absolutely false. There is no evidence whatever. Don't be tricked into thinking there was some evidence because you didn't hear any.

The only evidence you heard about a proffer was the evidence that Professor Sowards told Chester: "If you are going to do this, you are not going to get any stock that is tradeable, you can't trade a public market in that stock, it is all going to be restricted stock."

Did you hear anybody dispute that? Absolutely not. That is exactly what happened, the evidence is, ladies and gentlemen.

What about this no sale theory Mr. Keegan talked about. That is talked about in the letters, too, isn't it? They say that that theory only applies if it is not a scheme toget around the law, to give the public stock without adequate information.

The no sale theory wouldn't be applicable here.

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Wasn't there a sale? Did Mrs. Dundish get her stock for free, or Rabbi Schuchalter?

You better believe they didn't. These defendants were not giving that stock away. It was a quarter of a million dollars worth of profits they made, or at least revenue they received on that stock.

They were not giving it away and the Government submits to you you may well find a sale occurred here and this was not a regular dividend but just a series of transactions that could have been just as easily accomplished by taking the stock to Lockwood's office and start selling it out of the office there.

They didn't need to go to Florida.

Did anybody come up with another explanation about why they were going to Florida other than that they wanted to get around the law?

The Government submits not.

There has been another false issue raised in this case and that is all this business about Sidney Stein. What the defendants would like to do is they would like to get your eye off the ball, make you think that this is the trial of Sidney Stein.

Well, ladies and gentlemen, it isn't. Sidney Stein has already thrown in the towel. He pleaded guilty.

There is nothing we can do about that.

The Government doesn't make a practice of saying: Don't plead guilty and go to trial when people want to plead guilty.

He has pleaded guilty and any suggestion by Mr. Chester that he is going to get out of his guilty plea I submit is totally devoid of any support in the evidence and that is something you ought to let the Court worry about and not concern yourselves with that because there is no evidence whatever to support it.

You may well find it would be unlikely he could do that after he got on the witness stand and testified about all these payoffs and he also testified that -- he reiterated what he said when he pleaded guilty, which was that he thought there was a loophole, but that he also thought this spin-off was a sham, and you can hear that testimony if you want it read back.

The Government would submit what you have to do in this case is not be fooled into thinking you can try Sidney Stein for that, that is the issue before you, ladies and gentlemen. He is facing a possible sentence, the evidence establishes, of up to twelve years. He is also in a situation where if he lies or commits any other crimes he can be prosecuted for this enormous number

of crimes.

All right, ladies and gentlemen, the Government submits to you that the motive that he has in that posture is just to tell it accurately, the way it was.

But the point here is that that is an understanding that has laredy been arrived at. We don't ask you to like it, to dislike it, that is what you are confronted with, and the point you have to look at is the guilt of these defendants on trial.

Let's not focus on one witness out of some 35 or 40 witnesses.

You know, there were another 34 or 35 witnesses called in this case and the Government submits to you that you could establish the guilt of these defendants without even looking at the testimony of Mr. Stein.

Substantially what happened was Mr. Stein came along and after you have looked at all the other evidence he basically told youwhat you would already know.

Let's look at some of the evidence in this case.

Mr. Stern testified that the object of the operation, the whole spin-off thing, was to go pbulic. The documents show that as well.

Also Mr. Weitzman and Mr. Hochen testified that

at the February 8th meeting down in Florida that the object of public trading in the stock was discussed and predictions were made about how high the stock was going to go.

Also the Government's proof that this was an unlawful sham operation doesn't depend at all on the testimony of Sidney Stein.

The Government is not relying on Sidney Stein to establish there were nominees in this case.

Weitzman told you that, Hochen told you that, and Stein merely went along with it and said: Yes, that's right, and he confirmed it, if you needed any additional confirmation.

What about the phoney land transaction Mr.Chester talks about? If you look at the contract in that case, in the land deal, first of all, you will see that as the testimony was, and that is Exhibit No. 2 in evidence -- incidentally, you will see that as the testimony was, that that contract says that when clear title is furnished by Mr. Moore, then Mr. Chester is going to pay the stock and he is not paying the stock until he gets clear title and you heard the testimony that that stock was never paid and that the clear title was never furnished.

Mr. Chester reads to you a letter he sent to

the stockholders saying he conveys his interest in the land and he would suggest to you that therefore he was not falsifying anything about what that situation was, ladies and gentlemen.

Well, let's look at some more of the record.

When he is writing to Mr. Germaise and Mr.Germaise is basing a legal opinion, what did Mr. Chester say?

The last exhibit says, "The corporation owns 34,500 acres of unimproved land in Peru and has investments in stock of other public traded corporations."

Dated February 12, 1969.

Based on what you know, that statement is obviously clearly and flatly false.

That is what Mr. Chester said.

Do we have to call some other witnesses in to say Mr. Chester is not a very believable fellow, after you see what he does in that type of situation where he wants a legal opinion, where he will give a whitewashed version of the facts?

He doesn't say in that legal opinionthat National Ventures really doesn't own anything at all, doesn't conduct any business at all except for doing these spin-offs because he knows the opinion he will get will say that if that were the situation, then it would be an

unlawful transaction and he didn't want an opinion that is quite that obvious.

Also, how about the checks going back and forth; did you hear Mr. Chester talk about that in his summation, about the fact that that was just an obvious sham device he used in every one of these corporations?

Obviously not.

The Government submits that we established about four or five situations here:

Use of nominees, the land, the checks going back and forth, the shareholders, the expansion of the shareholders' list.

There is no evidence other than exactly what the Government witnesses testified to on that. It wasn't just Sten Nordin, by the way, who talked about expanding the shareholders' list.

Do you recall what Mr. Hochen said? He said Chester called him and said, "I need more shareholders and would you buy stock and put it in these other names? Don't put it in your own name."

Mr. Chester says: "Well, how about bringing in the records of Toy King? That would establish "Why didn't we do that?

The defendants didn't produce anything when they

were given their opportunity and you recall what the evidence was as to where the last place the Toy King records were. They were in Bill Chester's house in Florida.

Have you heard any evidence that suggests that the Government has the Toy King records?

You certainly have not. That was not one of those little twists to give you the impression that there was something there that may or may not be there.

The government submits to you that you should keep your eye on what the evidence was, and the evidence was in this case from two witnesses that Mr. Chester wanted to exapnd the number of shareholders of that corporation, and from one witness that it was 75 to 80 shareholders, and when Mr. Chester had an opportunity to prove anything different he certainly didn't do it.

Now, he doesn't have to prove anything, that's true, but he can't come along and suggest to you that because of the fact that some records weren't produced that, therefore, you should imagine there was other proof, you should imagine there was conflicting proof, or some sort of defense in this case.

Don't do that, ladies and gentlemen.

We submit that we have established the proof to your satisfaction, and a lot of this imagination and innuendo about what might be somewhere else is nothing more than that, and is a continuation of an effort to fool you, just like they wanted to fool the SEC originally.

A statement was made as well, ladies and gentlemen -- let's turn to the defendant Haskell for just a moment. I think we have pretty well established what kind of company Stern Haskell was, and what they stood to gain here. We never contended that he actually cashed in on his

profits. Mr. Fischetti in his summation said that this was something like the case where somebody goes in to rob a bank and says, "This is a robbery; I'm giving you a hundred thousand dollars."

That's pretty funny, until you stop to think about what the deal was here. Actually, you might say that this was a bank robbery where he goes in with other people, and the other people are going to get their cut right away, and he is going to wait to get his. He is not going to get his cut right away, but he is going to get it, and he's got 320,00 shares to prove it. And if you don't think he can't multiply 320,000 by five after all that time in the used car business, the government would submit that you have been fooled.

Another thing Mr. Fischetti attempted to do on behalf of Mr. Haskell, and that is he attempted to suggest to you Mr. Haskell is really Mr. Stern, and that because Mr. Stern didn't know this, didn't know that, therefore, Mr. Haskell didn't know it.

Don't fall for that one, ladies and gentlemen. Don't fall for that one at all. The fact that Mr. Stern didn't know what was happening really, and that he didn't think it was illegal, doesn't answer the question as to what was in Mr. Haskell's mind.

Mr. Stern didn't go down to Florida and get in on the February 8th meeting where they selected the nominees, did he? He didn't sit there while they were figuring out where they were going to have the price of the stock go, did he? He wasn't there while they were playing gin rummy in the Stein-Rubinson-Feiffer apartment on 72nd Street, was he? He wasn't the one that was going down to the offices of Lockwood and Company all the tim-, was he? Miss Benenson said it seems like he was there every day. What is it that the defense would have you believe that he was doing there all the time, selling used cars. Is there any testimony on that?

When you think about that from your common sense you would know that when people sell used cars they don't do it at a brokerage office, they do it at a used car lot where somebody can come down to see what the cars look like or what they have.

The defense would also have you conclude from the fact that there were some cars sold that he was always there delivering papers to them. You don't have to go to Gardner Securities, though, every day to deliver the papers and the license plates or whatever for the four or five cars you might have sold. You might even use one of your network of commission salesmen to do that.

So don't think Mr. Stern is Mr. Haskell.

What else did Mr. Fischetti say? Mr. Fischetti also suggested Mr. Disner might be Mr. Haskell. Mr. Disner isn't Mr. Haskell, either, and the fact that Mr. Disner didn't know certain things doesn't establish very much, because Mr. Disner wasn't at the meeting at Blank Furniture, either, and he wasn't up in the Stein-Rubinson-Feiffer apartment, either, so don't fall for that, either.

You have to focus on the evidence of what Mr. Haskell did, and where he did it, and where he was, and what he heard, as has been testified to by the witnesses and was put in evidence here and, as I summarized to you earlier, the various things he knew had occurred.

The fact that Mr. Stern said he thought that certain things were legal does not establish what Mr. Haskell thought. It wasn't Mr. Stern who did a number of things, and who requested a number of the things in this particular case.

Let's look at Mr. Reynolds for a brief moment as well. You will recall that Mr. Reynolds' attorney, Mr. Keegan, made an argument basically similar to the argument made by Mr. Rubinson, which is "my name isn't on any of the papers, and, therefore, I must not be guilty."

Mr. Keegan made the argument particularly with

md 3-5

respect to National Ventures. He said Mr. Reynolds' name isn't on anything in National Ventures.

It has been the government's contention all along it was set up specifically that way, that when you look at the situation and you find that Mr. Reynolds brings to Mr. Chester this valuable company, this shell company that is later on worth $50,000, and there is no testimony that he gets anything for it, and then all of a sudden he doesn't have any stock of National Ventures, then later on he pops up as one of the major owners, or a substantial profiter from Stern Haskell, that you are entitled to find that exactly what Mr. Nordin says is true, and that is that they had a deal that they were basically going to share the profits. They knew that whoever was going to be on the stockholders list with a large block of stock was a control person, so they set it up so Chester was on the list as a control person, Reynolds was not on the list, and, therefore, Reynolds could go around selling stock, kicking back some of the stock to Chester.

I think that that is fairly clear, the way we established it, ladies and gentlemen.

Now, let's go to the market manipulation. Let's look again at what we have without turning to Mr. Stein's testimony.

First of all, you have it well established that this is a miserable little stock that certainly isn't worth four dollars a share.

Secondly, you have it established that its price goes vastly beyond any value that it has by any computation.

Thirdly, you have it established that the major market maker, Mr. Levine, is very, very closely connected to the major sellers of this stock.

How is that established other than by Mr. Stein? Mr. Weitzman testified to that, said that he had heard conversations between Stein and Levine, said that he saw Feiffer taking stock down to Levine and divide it up down in Lockwood's office.

You heard Miss Benenson testify when she wanted to reach Mr. Stein and he wasn't at the 72nd Street apartment she would call him over at Lockwood, that that's where he normally would hang out.

You heard Miss Steinberg testify to essentially the same thing.

You heard Mr. Mark testify he saw him comingin there all the time.

You know, ladies and gentlemen, it can't be, it can't be what Mr. Andrews says -- maybe, maybe, Levine

got into the market through some other force, through some other method other than Stein.

Let's look at some of the evidnnce on that, ladies and gentlemen. I don't have the time to read it for you, but if you want to hear it the government submits that you listen to some of those tape recordings again, and you listen as well to the testimony of Mr. Weitzman, and you will have no doubt that it was clear that it was through Mr. Stein, Mr. Rubinson, and Mr. Feiffer, that Mr. Levine got into Stern Haskell stock.

And also let's just go back to one of those tape recordings. You will recall where Mr. Andrews was making some argument that perhpas they didn't want Weitzman to be talking to Levine about Stern Haskell stock. You recall the transcript went as follows:

"Weitzman: Uh--the only thing is I needed expense money so I went -- uh -- to try and sell some of the Stern Haskell --

"Feiffer: Okay.

"Weitzman: --And they told me that I need proof of ownership.

"Feiffer: I told you what to do. That's exactly what --

"Weitzman: I got to call Lockwood.

,d 3-8

"Feiffer: --I told you. Did I tell you what to do? Did I?

"Weitzman: No. You were going to get back to me.

"Feiffer: No, didn't I tell you; you just can't sell it? It would have to be done through Lockwood because, you needed proof, they'd ask you for proof of ownership.

"Weitzman: Oh, okay.

"Feiffer: Didn't I tell you they'd ask for proof of ownership?

"Weitzman: Right.

"Feiffer: Okay.

"Weitzman: Okay.

"Feiffer: Right.

"Weitzman: Then I'm going to call Lockwood.

"Feiffer: No."

That's where Mr. Andrews stopped, but it continues:

"No. Talk to Norman. He'll take care of it -- the -- bring it with him.

"Weitzman: I shouldn't do --uh -- call up Lockwood myself?

"Feiffer: No, you'll speak to Norman and he'll call for you and he'll bring the stock up here for you to

leave Lockwood with, where they can sell it.

"Weitzman: Okay. Very good."

The point is, ladies and gentlemen, this just establishes what the government has been contending all along, that this is a well-organized, coordinated operation, and that they have different people to do different things.

There isn't any effort to stop Weitzman from meeting Mr. Levine. Weitzman testified he went with him to Lockwood a number of times. Frequently, he was asked to leave the room when they were having some discussion, but he went down there a number of times.

The proof is certain Levine got into the market through a natural force, and that natural force is one of the most naturaly and most -- one of the oldest forces known to mankind, and that is greed and money. That's how he got into that market, and the market was coming from Stein, and also Rubinson and Feiffer.

Now, what elseo do you have to corroborate that? How about the fact that Mr. Levine is pushing the stock by guaranteeing Sklar of Equity Investment against any loss? You have that fact as well. That indicates that he is the one, he is very interested in trying to push the stock. He wants to get public investors to buy it and other brokers to sell it.

md 3-10

You also have the fact that Mr. Wax is the major retail broker of this stock, and he is a very close friend of Mr. Levine. Isn't that interesting?

Mark, Jerry Mark, testified that he was up there all the time.

Now, Mr Andrews responds that, first of all, Miss Dundish testified that Wax said not to buy more Stern Haskell stock. I wasn't here on that day, ladies and gentlemen, so all I could do was read the transcript, which I did. It just doesn't say that. There is no testimony that could even look similar to that.

Mr. Andrews also told you Rabbi Schuchalter said that he would buy more stock if Mr. Wax wanted him to, but Mr. Wax did not recommend buying more stock. Rabbi Schuchalter, according to the transcript, gave no testimony like that, close to it, or even similar to that.

It is your recollection that controls, of course. All I did was read the transcript.

Now, Mr. Andrews said, "Well, Wax sold 25 per cent by payoffs, that leaves 75 per cent that was sold without payoffs.

Oh, no, ladies and gentlemen. You recall what Mrs. Nelson testified to. She said who were the major sellers of this stock? There was A. T. Brod, there was

F. M. Mayer, which Phil Kaye told you was one he put in. There was Merit Investors, which Phil Kaye told you was another one he put in. Then Equity INvestment, No. 5, actually, which is the one getting a guarantee against loss by Mr. Levine.

Then, finally, who else is there? There is Lockwood and Company. They are selling the stock.

So you had accounted for you the bulk of the selling of Stern Haskell stock to the public, and you can't look at the situation as though there were seventy-five per cent of the stock was sold in a free and honest market, because it wasn't. There wasn't any free and honest market in this situation.

Mr. Andrews says, "Well, maybe the trades weren't Mr. Levine's trades."

The evidence is to the contrary, ladies and gentlemen. Mark testified that Levine was the head trader and on page 4715 of the record he said that Stern Haskell was his stock. One 5718 he said that Levine made the decisions on Stern Haskell.

Weitzman testified that he went with Feiffer to Lockwood in connection with Stern Haskell, that Feiffer told him that Lockwood was managing the market in Stern Haskell and that Levine was the only one that he ever saw

anybody talking to at Stern Haskell.

You also will recall what Mr. Abt, the trader at Granger said. He didn't say he was talking to anybody else other than Levine. He said on Stern Haskell he dealt with Larry Levine. That's what he said, ladies and gentlemen, and the government submits to you that that's the only evidence whatever in this record, and that is that Levine was the trader of Stern Haskell stock.

All right, ladies and gentlemen, there were a couple of other things. There was an analysis of the chart that was given to you by Mrs. Nelson. I am not going to go over that in any greater detail.

There was the suggestion by Mr. Andrews that Levine was absent from the firm at the time Stern Haskell was trading. That wasn't the evidence. All the question was was he sick at some time during 1969, and in the summer of 1969. There was no specific time as to when he was sick. You could well find that was when there wasn't much trading going on. There is no proof that was when the trading was going on. The only proof is that Mr. Levine was the one directing the trading.

They say they got some other chart from the government that shows that the government was originally going to make a showing of exactly who the traders were.

That is correct. But the point is, as Mrs. Nelson testified, you can't tell from the order tickets who the trader was. All you can do is ask the people about the trades. We asked Mr. Mark, we asked Mr. Abt. They both pointed to Mr. Levine, and there wasn't any evidence to the contrary.

In addition, Mr. Andrews, after all of the evidence is in, says there isn't any evidence that Mr. Levine or Mr. Wax were involved in any other transactions with Mr. Stein; therefore, you should find, ladies and gentlemen, that this is a one-shot transaction and that all the rest of the time they were good little boys and they were never pulling off any frauds.

You certainly didn't hear him ask that question when Stein was on the stand, did you? Did you get into any other deals with Mr. Levine? Did you hear him ask that one? Did you hear him ask Mr. Kaye whether there were any other deals with Mr. Levine or Mr. Wax? You sure didn't hear him ask that when the witnesses were on the stand. He didn't have the nerve to do that.

Ladies and gentlemen, if you want to look at the evidence you look at this evidence. The Levine trades, whether that is in evidence. Mr. Wax's trades are in evidence. You are going to hear about some other stocks. Do you remember the stocks that Sidney Stein testified were

md 3-14

manipulated stocks? Allen Electronics, Beta Orthodontis, Boujeray Watches, which Kravetz testified to, Cadillac Knitting Mills, Calculator Computer, David Ault, General Auto Parts, Fallon Smith, the great Imperial stock, Lanai. Loric, Viking General. They are all in the record, ladies and gentlemen, of the stocks being manipulated and brought out on cross examination of the government witnesses. You didn't see him have the guts to ask that question when they were on the stand.

Well, ladies and gentlemen, just look in Mr. Levine's blotter, if you are really interested in that. Look at what Mr. Wax was selling to his customers, if you are really interested in that. And you will find an answer to that particular problem.

But the government didn't present that originally. Not because we didn't have it, not because we didn't particularly want to focus on it, but because you should focus on the evidence that is related to Stern Haskell, and the government submits that you should not be misled by suggestions as to what is not in the evidence or suggestions that there is something that's been left out because it isn't there.

I want to briefly talk about Mr. Gardner for just a moment. It seems unclear here whether or not the defense

for Mr. Gardner is really contending that Gardner told anybody that this was investment stock that he had.

It seems obvious to you that he did not. Mr. Fischetti told you in his argument that this investment stock was really not worth very much at all, and that seems to be what Mr. Gardner is saying when he says that he only paid ten cents a share, and that is a normal price for this investment stock.

You look at the July 16th letter. It says it is registered stock. Written two days after Mr. Gardner signed an investment letter.

Mr. Higgins says it doesn't say it is not investment stock. Maybe he meant something else.

The next thing written is the June 30th net worth statement that says it is marketable and not lettered stock. Mr. Higgins says it doesn't say it is not investment stock. That is true. But you may well find, and the government submits you can't find otherwise, than that is exactly what was meant, that it was not investment stock. That is what everybody understood in the transaction, and that is exactly what Mr. Gardner meant it to mean when he either signed the letter, as is cl-ar that he did, or when he signed the net worth statement, regardless of who it was who printed it up.

So, ladies and gentlemen, then Mr. Higgins goes to the telephone conversations with Mr. LaLone and Mr. Carroll, and he suggests to you, without really saying it, that they testified falsely.

Ladies and gentlemen, there is absolutely nothing whatever to support that. The only shred that Mr. Higgins came up with was the idea that possibly these people may have -- that LaLone may have had an interest, and that was because LaLone said possibly Gardner paid him something around that time. There was no proof that he did. He was just saying he didn't know whether he did or didn't. There was no proof on that, and you shouldn't accept that as any finding of fact.

What you should accept is what these two witneeses testified to, that Gardner represented the stock all along as non investment stock, and you may well look at the fact that he certainly never said, "Hey, this is investment stock."

If he were really dealing honestly and truthfully obviously this is what you would say: I want you to know this is investment stock. And you would put it in writing. That was never done in this case.

There were a number of things that I would like to draw your attention to that were nothing more than just shams and tricks by a number of the defendants in this case

during their arguments.

First of all, Mr. Chester says that he would have stipulated to a lot of things that the government put in. Of course now he says that he would have stipulated it, but you saw him when the witnesses were on the stand.

Chester: Objection.

Don't let him say that.

Don't let him say that from back here.

Let's hear it from the witness stand.

Objection after objection after objection. And now he will attempt to suggest to you that he would have stipulated all along. Don't accept that, ladies and gentlemen. There isn't any evidence of that.

They also say there weren't enough witnesses, and I have counted up some eight or so different witnesses that the defense now says the government should have called, whereas at the same time they are screaming about the fact that the case took so long.

Ladies and gentlemen, first of all, the government's obligation is to prove this case beyond a reasonable doubt, and we submit that we have done that. We submit, furthermore, if there are any of these witnesses, including Mr. Reynolds' father that they are even suggesting we should have called, or Chester's ex-wife that they are

suggesting we should have called, if there are any one of those witnesses who would have done one whit of good for any of these defendants, either because they would have had something relevant to say or because they would have exculpated any of these defendants, you could bet your bottom dollar any of these defendants would have had them in here, whether it was Ben Malmeth, whether it was an ex-wife, whether McKay, whether Reynolds' father, or whether it was Tom Fox, the expert, who was sitting right here in court, and all they had to do was stick him on the witness stand.

They could have called him and didn't. The reason is, ladies and gentlemen, or you may find the reason is, it wouldn't have done them any good, and they knew it, and that's why they didn't call them.

Also, Mr. Chester talks about the grand jury, and he says the grand jury did something wrong in this case, or just rubber stamped it.

You heard testimony that Kaye testified in the grand jury in February, and that Stein testified in May. You may find from that that this was a long grand jury investigation.

In addition, you can see, ladies and gentlemen, that Mr. Chester will stop at nothing. He will stop at

nothing. He will attack anyone.

These defendants in this case, if you want to believe what their position is, you have to find -- or they have suggested toyou in one way or another that not only Stein and Kaye, but also Mr. Stillman was testifying falsely, Mr. Andrews tells you he had a conflict of interest without knowing, without asking, without having the nerve to ask him when he was on the witness stand.

Mrs. Nelson is all wrong. Mr. LaLone's testimony is incredible. Mr. Carroll's testimony is fudging. There is something false about that. Rubinson says that Kravetz is not telling you the truth. Chester says that Fenton is not telling you the truth, that White is not telling you the truth.

Everybody is making it up. And not only that, the prosecution is down on them, the Court won't let them get their evidence in because of all these unfair things that happened, and, in addition to that, the grand jury gave them some kind of a raw deal.

Ladies and gentlemen, they will stop at nothing. They will stop at nothing because just in the way that they wou take the money from everyone who would buy that worthless stock back in 1969,they will attack anyone, they will scratch at anyone, they will defame and slander anyone, if it will

get them what their purpose is, and that purpose is to fool you, and it is to suggest to you that they are really not guilty despire the overwhelming weight of what the evidence is in this case.

I briefly would like to refer to what the evidence is concerning Mr. Stein and Mr. Kaye. They have already been found guilty, ladies and gentlemen, by their pleas of guilty.

You have to look at the situation, and the government submits to you that you may find what they do is corroborate and put meat on the rest of the case as it was already there, particularly in Mr. Stein's case.

Mr. Kaye has established for you exactly what the motive was here, exactly what the motive was for Levine and for Wax: the payoffs.

He explained it very clearly. And they recruited him.

Then Mr. Stein came along and he told you the same thing.

Ladies and gentlemen, you've got to be realistic. If there is corruption in the stock market, how are you going to find out about it? Are you going to wait until some SEC investigator comes in and tells you that a payoff occurred right under his nose? Obviously, that is not what

is going to happen. And when somebody who was really there, when the people who made the payoffs, come in and say to you, "This is what happened, and I want to plead guilty to it," are you going to say, "Oh, no, I don't want to hear it; you are a criminal; I don't want to hear what you have to say"?

Or: "When you were first asked in the SEC in 1970, you didn't tell us about it then, you behaved just the way we know criminals do, and you tried to give some kind of exculpatory story then" -- is that what we are going to say?

The government submits that that would be a highly unrealistic approach, an approach that the only people who would ever suggest that would be the defendants who are sitting here on trial, because these men have broken one of the basic bonds of the arrangement. That's why they are so disgusted with Stein and with Kaye, because they have told what they weren't supposed to tell, and what they never wanted told in court.

THE COURT: Excuse me, Mr. Wohl, your time is up.

MR. WOHL: May I just say, ladies and gentlemen, that I know that your duty is a difficult one. I have not

told any jokes to you because it is not a pleasant duty to prosecute any more than it is a pleasant duty to try this case as you will. You sit in the same seats that jurors have sat in many years before you in the same manner that jurors have sat in many years before you and will after you.

The government submits that when you examine this case truthfully and carefully, without fear or favor, that you can come to no other conclusion than that these defendants are guilty as they are charged.

* * *

(Jury present)

CHARGE OF THE COURT

THE COURT: Ladies and gentlemen, before formally beginning the charge, I want to thank you for the careful attention which you have paid to the testimony and other evidence in this case.

I know it has been a long trial, and that at times your patience has been tried, but I want to remind you of something which I said when the trial commenced, I believe, that we all have a stake in the fair and impartial administration of justice, and a trial by jury is a basic and cherished institution in our system, and that when you sit on a jury, you are playing a vital role in the administration of justice.

I know that in order to serve on this jury each of you has had to make some personal or business sacrifice in order to do so. But I feel sure that any personal or business sacrefice which you had to make in order to serve on this jury, you were glad to do so in the interests of the fair and impartial administration of justice.

Before formally beginning the charge, I would also like to thank the lawyers and the defendants in this case for their patience and for their cooperation, for being here promptly every day, and for cooperating with

the Court in carrying this case forward.

I would also like to congratulate the lawyers on the very able manner in which each has represented his respective client, and for the very vigorous manner in which each has done so.

I would like to thank Mr. Rubinson and Mr.Chester, who represented themselves, for their cooperation with the Court, and for the able job which they did in representing themselves.

Now, during the course of Mr. Wohl's closing remarks he made a statement which I want to caution you about.

As you can see, I have written out the charge, and I have handed a copy of it to you. The reason I have done that is because, as you can see, the charge is long. I must read to you every count in the indictment which is included in there, and it makes it easier for you to follow along by including the counts in the indictment along with the instructions as to the law.

Since this arose after the charge was prepared, I want to say a brief remark or a brief word about that.

You will recall that Mr. Wohl said that the defendants failed to call any witnesses.

I want to say that that is not to be construed

by you as a statement by him that the defendants should have taken the stand.

As I told you, the defendants are not required to testify, are not required to call any witnesses.

But Mr. Wohl was permitted to say that they could have called witnesses to testify as to certain things. Thatis different from saying that the defendants should have or could have taken the stand.

So I didn't want you to be confused by that. That was just a suggestion that the defendants could have, if they wanted to, called various witnesses.

As I have said, I have written out the charge, and I am going to read it slowly. I trust that you will now bear with me and give me that same degree of attention which you have given throughout the trial, so that you may carefully understand the legal principles which you are to apply to the facts in this case as you find them.

As you approacn the performance of your function inthis case, which is the determination of the guilt or innocence of each of these defendants separately, please remember that it is your duty to weigh the evidence carefully and dispassionately, without sympathy or prejudice for or against either the Government or any of these defendants.

As you approach the performance of your function in this case, which is the determination of the guilt or innocence of each of these defendants separately, please remember that it is your duty to weigh the evidence calmly and dispassionately, without sympathy or prejudice for or against either the Government or any of these defendants.

Every defendant appearing before this court is entitled to a fair and impartial trial regardless of his occupation or station in life.

Some of the defendants in this case were represented by counsel, others were not. As to those defendants who were not represented by counsel, they were defendants whose chose to represent themselves. I instruct you that a defendant in a criminal case is not obliged to employ counsel and has the right to represent himself. The fact that a defendant represents himself cannot be held against him, and you must decide or determine his guilt or innocence in the same manner as you determine the guilt or innocence of a defendant who was represented by counsel. That is, guilt or innocence must be determined solely on the evidence in the case or the lack of evidence, and on nothing else.

The fact that the Government is a party here,

that the prosecution is brought in the name of the United States of America, entitles it to no greater consideration than that accorded to any other party to the litigation. By the same token, it is entitled to no less consideration. All parties, Government and individuals alike, stand equal before the law.

You, as jurors, are the sole and exclusive judges of the facts in this case. You pass upon the weight of the evidence. You determine the credibility of the witnesses. You resolve such con flicts as there may be in the evidence. You draw such reasonable inferences as may be warranted by the testimony or exhibits or stipulations in the case.

Statements made by lawyers, by defendants representing themselves, or by the Court with respect to any factual matter are not evidence. The evidence in a case consists of three things: 1) the testimony of the witnesses who were sworn and who testified; 2) the exhibits which were received in evidence, and 3) any stipulations as to certain facts which the lawyers entered into, and nothing else.

You have just heard a lengthy summation and review of the evidence in this case by the lawyers on both sides and by the parties representing themselves. In those

closing statements all of the evidence was thoroughly reviewed. It is, therefore, unnecessary for me to review again the evidence in the case during the course of this charge. In a Federal Court a judge is permitted to comment on the evidence, but I will not do so, and during the course of this charge I do not intend to do so by anything I say. I intend to leave the matter of the evidence that is, how much weight, for example, you should attribute to the testimony of any witness entirely up to you.

Therefore, I remind you again, that with respect to any fact matter that is, any fact matter in evidence -- it is your recollection, and yours alone, that governs. Anything that counsel for the Government or counsel for a defendant or any defendant representing himself may have said with respect to any factual matter, whether stated in a question, during the course of the trial, in the opening statement or in summation, is not to be substituted for your own independent recollection of the evidence or facts in this case.

So, too, anything that I may have said during the course of the trial, or may refer to during the course of these instructions as to any matter in evidence or as to any factual matter, is not to be taken by you as the fact in lieu of your own recollection as to what the facts are.

The fact that I refer to some of the testimony during the course of these instructions does not mean that I think that that is the only testimony you should consider or the most important testimony. In deciding the guilt or innocence of these defendants, you must consider all the testimony, both direct and cross-examination, except as I shall from time to time instruct you in this charge.

My function is to instruct you as to the law applicable to this case, and you should accept the law as I state it to you in these instructions and apply it to the facts as you find them.

The logical result of that application is a verdict in the case which, as I have said, must be returned as to each defendant separately and as to each count as to each defendant separately.

Now, I want to caution you that you are not to single out any one instruction alone as stating the law but you must consider these instructions as a whole.

You are not to assume that I have any opinion as to the guilt or innocence of any defendant or as to the truth or falsity of any charge. The fact that I have denied motions or granted motions during the course of the trial is not to be taken by you as an indication that a defendant is believed by the Court to be guilty or not

ds5

guilty. My rulings on these motions are matters of law with which you, as jurors, have no concern. If during the course ofthe trial, a question was asked and an objection interposed and I sustained the objection, you are to disregard the question and any alleged facts contained in the question. Similarly, if I ruled that an answer be stricken, you are to disregard both the question and the answer in your deliberations.

There are twenty counts in the indictment. Each count must be considered separately. Likewise, each defendant must be considered separately as to each count in which he is named. No defendant may be convicted of a count in which he is not named. Your verdict on each count and as to each defendant must be based solely on the testimony which you heard from the witnesses who took the witness stand, the stipulations as to certain facts which the lawyers agreed upon, the exhibits which were actually received in evidence, and on nothing else.

In making your determination as to the guilt or innocence of a defendant on trial before you, you must bear in mind that guilt is personal. The question of guilt or innocence of each of the eight defendants who are on trial before you must be determined separately as to each defendant and as to each charge made against him, and your verdict as

to each defendant as to each charge must be based solely on the evidence or the lack of evidence as to him, as to each charge.

Your verdict cannot be based, even in part, on the fact that someone else has already pleaded guilty to a charge in this indictment. The fact that someone else has pleaded guilty to a charge in this indictment can never be considered by you as evidence or proof of the guilt of any one of these defendants now on trial before you. In this case, Sidney Stein and Phillip Kaye have pleaded guilty to certain charges made against them in this indictment. The fact that Mr. Stein and Mr. Kaye have pleaded guilty is simply irrelevant in determining guilt or innocence of another person who is on trial before you in this case.

In addition, there are other persons, Saul Weitzman, Louis Larry Hochen, Harry Silber, Arthur Kravetz, Yehuda Weiss and B'Noth Jerusalem, and unknown individuals, who have been named in the indictment as co-conspirators but who have not been named as defendants and who, therefore, are not on trial before you. This fact also is simply irrelevant to the function which you have to perform. That function is to determine whether a particular defendant who is now on trial is either guilty or not guilty of a

ds7

particular charge made against him.

At least two of the alleged unknown co-conspirators have been identified and have now testified on this trial. They are Sten Norden and Richard Stern.

In short, the guilt or innocence of each defendant on trial must be determined separately as to each count with which he is charged and must be based solely on the evidence or the lack of evidence presented as to him. And, before you can find a defendant now on trial guilty as to a particular charge mage against him, you must be persuaded of his guilt of that particular charge by the evidence against him beyond a reasonable doubt.

You are not to speculate as to why other persons are not on trial or have not been indicted. You are not to discuss those facts in your deliberations. Such facts have nothing to do with the guilt or innocence of a defendant on trial.

The fact that a defendant witness has pleaded guilty and has testified for the Government is a fact, however, which you may take into account in assessing the credibility of that witness.

Also, the fact ghat a co-conspirator has been named as such but has not been named as a defendant and has testified for the Government is also a factor that you may

take into account in assessing the credibility of that witness.

In short, you may take into account any motive that a witness may have in testifying for the Government in trying to decide whether and to what extent you believe that witness' testimony. I shall instruct you further as to how you go about deciding whether and to what extent you will accept a witness' testimony, but at this point I want to emphasize that motive is a factor which you may take into account in assessing the credibility of a witness.

You are instructed that when you are weighing the testimony of the co-conspirators who have pleaded guilty and who are testifying for the Government you may take into account any motives the witnesses may have in testifying for the Government. Two of the witnesses, as I've said, have pleaded guilty to certain counts of the indictment, and have not yet been sentenced. Their motive for testifying for the Government may be that they hope for leniency from the Court when they come before the Court for sentencing in this or some other case. This factor, however, does not disqualify the testimony of that witness, but it may well affect the weight you give his testimony in adjudging the guilt or innocence of these defendants. Similarly, in the case of co-conspirators who have not

been named as defendants and who have not been indicted in this case, it may be that they hope that by testifying for the Government they will not be indicted in this or some other case, or it may be that they agreed to testify in exchange for not being indicted.

During the course of the trial you have heard the testimony of some of these persons, that is, Stein, Kaye, Weitzman, Weiss, Hochen, and Kravetz, who testified concerning their involvement in the crimes charged in the indictment. Such persons are called accomplices. Under the law, in order for one to be an accomplice, he must have been involved in the commission of the crime or crimes with which a defendant is charged. He must be a participant in that crime or crimes.

An accomplice does not become incompetent as a witness because of his participation in the criminal act charged. His testimony is not to be rejected unless the jury thinks it has no weight. Like any other testimony, it is to be considered and dealt with by the twelve men and women who are the triers of the fact.

Such evidence is properly considered with care and scrutiny, checked up with the other facts in the case and given appropriate weight.

The testimo ny of an accomplice alone, if

believed by you, may be of such weight to sustain a verdict of guilty, even though it is not corroborated or supported by other evidence in the case. However, you should keep in mind that the testimony of an accomplice is always to be received with caution and considered with great care.

If you find that any witness who testified aided or abetted or was otherwise involved in the crimes charged against these defendants, you should scrutinize his testimony with special care.

If the testimony of an accomplice was not supported by corroborative evidence, you should not convict a defendant on that unsupported testimo ny alone unless you believe the testimony beyond a reasonable doubt.

Any personal bias which a witness may have against any defendant on trial is also something you may consider in determining the credibility of that witness.

Another factor which may be considered by you in determining the credibility of a witness is evidence that the witness has been convicted in the past of certain crimes. This is not to say that a person with prior convictions is to be deemed incapable of telling the truth; prior convictions may, however, be considered when you consider the believability of a witness.

You, as jurors, are the sole judges of the

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credibility of the witnesses and the weight their testimony deserves. You know, of course, that there is no automatic way to decide who is telling the truth and who is not. Credibility can be equated with believability and reliability. If a witness is credible, you say he is believable and reliable. If he is incredible, you say he is unbelievable. There is nothing mysterious about these words.

By what yardstick are you to judge the credibility of the witnesses? Each of you has given careful attention to the testimony as it came from the witnesses themselves. You have observed the witnesses.

Issues of fact are presented for your determination. To a large extent the resolution of them depends upon the credibility of the witnesses and the support or lack of support they received from other evidence in the case. An issue of fact is presented, for example, when one witness testifies that a certain event occurred and another witness testifies that it did not occur.

Your duty is to decide the issues of fact. Use your logic, your reason and your common sense. Do not be sidetracked or diverted or distracted by what you consider to be a minor or insignificant detail or irrelevancy, or by what you consider to be an appeal not to your reason or logic but to mere sentimentality or unthinking passion.

I repeat: use your common sense.

You should carefully scrutinize all the testimony given, both direct and cross-examination, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider the witness' ability to observe the matters as to which he has testified, and whether he impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony ofdifferent witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a

matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

In determining credibility and weight to be given to the testimony of any witness, you should also consider the testimony of the Government employee witnesses. The mere fact that they are employees of the Government entitles them to no more and no less consideration than any other witness.

Nor should you be influenced by the number of witnesses a side has called or the number of documents received in evidence. It is the quality of the testimony and other evidence which counts, not the quantity.

After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves.

If you find that any witness, and this applies to all witnesses, has wilfully testified falsely as to any material matter, you may reject the entire testimony of that witness or you may accept such part or portion as commends itself to your belief, or which you find corroborated by other evidence in the case.

The testimony of an admitted perjurer should always be considered with caution and weighed with great

care. You will recall that witnesses have conceded they lied, under oath, on various occasions.

A witness may be discredited or impeached by contradictory evidence; or by evidence that at other times he had made statements which are inconsistent with his present testimony, or by his own admission that he committed perjury, as he understands it, when testifying as to these matters.

If you believe a witness has been impeached and discredited, you may give the testimony of that witness such credibility or no credibility as you see fit.

Each defendant has pleaded not guilty to each count in the indictment in which he is named. Consequently, the [Government,] if a defendant is to be convicted as to a particular count in which that defendant has been named, has the burden of proving that the particular defendant is guilty as to that count beyond a reasonable doubt. It is a burden that never shifts. It remains upon the Government throughout the entire trial. A defendant does not have to prove his innocence. On the contrary, he is presumed to be innocent of the accusations contained in the indictment.

This presumption of innocence was in his favor at the start of the trial, continued in his favor

throughout the trial, and is in his favor even as I instruct you now. It remains in his favor during the course of your deliberations in the jury room.

It is removed only if and when you are satisfied that the Government has sustained its burden of proving the guilt of a defendant as to a particular charge or count beyond a reasonable doubt.

The question that naturally comes up is, what is a reasonable doubt? The words almost define themselves. Reasonable doubt is a doubt founded in reason, and arising out of the evidence in the case, or the lack of evidence. It is a doubt which a reasonable person has after carefully weighing all the evidence, the kind of doubt which would make one hesitate to act. It means a doubt that is substantial and not merely shadowy.

Reasonable doubt is one which appeals to your reason, your judgment, your common sense, and your experience. It is not caprice, whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant.

If, after a fair and impartial consideration of all the evidence, you can candidly and honestly say that you are not satisfied of the guilt of the particular defendant whom you are then considering and that you do not have

an abiding conviction as to that defendant's guilt, such a conviction as you would be willing to act upon unhesitatingly in important and weighty matters in the personal affairs of your own life, then you have a reasonable doubt and, in that circumstance, it is your duty to acquit that particular defendant as to the particular charge you are considering.

On the other hand, if after such a fair and impartial consideration of all the evidence you can candidly and honestly say that you are satisfied of the guilt of that defendant and that you do have an abiding conviction as to that defendant's guilt, such a conviction as you would be willing to act upon unhesitatingly in important and weighty matters in the personal affairs of your own life, then you have no reasonable doubt, and, in that circumstance, you may convict.

A reasonable doubt does not mean a positive certainty or beyond all possible doubt.

If that were the rule, few men, however guilty they might be, would be convicted. It is practically impossible for a person to be absolutely and completely convinced of any controverted fact which by its nature is not susceptible of mathematical certainty.

In consequence, the law in a criminal case is

that it is sufficient if the guilt of a defendant is established beyond a reasonable doubt, not beyond all possible doubt.

There are two classes of evidence recognized and admitted in courts of justice, upon either of which you may find an accused guilty of crime. One is called direct evidence. The other is called circumstantial evidence.

Direct evidence tends to show the fact in issue without need for any other amplification, although, of course, there is always the question whether it is to be believed.

Circumstantial evidence, on the other hand, tends to show other facts from which the fact in issue may reasonably be inferred. It is evidence which tends to prove a fact in dispute by proof of other facts which have a legitimate tendency to lead the mind to infer that the fact sought to be proved is true.

For instance, it is sometimes difficult to tell by merely looking out of the window of an upper floor of a building whether it is raining or not. However, if you look out of the window and see that the people passing by in the streets below have their umbrellas up and that the streets are wet, you may come to the conclusion that it is

raining. In that situation, you have direct evidence, that is, the evidence supplied by your own senses that the umbrellas are up and the streets are wet, and that constitutes the circumstantial evidence from which you are entitled to infer that it is raining. In other words, circumstantial evidence consists of facts proved from which the jury may infer by a process of reasoning other facts in dispute. It is not necessary that the participation of a defendant in a particular act be shown by direct evidence. The defendant's participation may be inferred from such facts and circumstances in evidence as would legitimately sustain such an inference.

Knowledge, wilfulness and intent of a defendant need not be proved by direct evidence. Like any other fact in issue, it may be established by circumstantial evidence. In trying to prove what a defendant knew or intended, the Government is undertaking to prove what a defendant's state of mind was at a particular time.

It is obviously impossible to prove directly the operation of a defendant's mind, because you cannot look into a person's mind and see what his intentions were, but the proof of the circumstances surrounding the defendant's activities may well supply an adequate and convincing basis for finding that a particular defendant acted

knowingly, wilfully, and intentionally.

The actions of a person must be set in their time and place, just as the full meaning of a word is commonly understood only in its relation to the other words in a sentence or in its context. So the meaning of a particular act or conduct may depend on the circumstances surrounding that act or conduct.

In determining the issue of knowledge, wilfulness, or intent, you are entitled to consider any statements made by a defendant which are in evidence, and acts done by the accused, and all facts and circumstances in evidence which may aid you in determining a defendant's state of mind.

You may consider such things as the age, background and experience of a defendant, and whether such facts make it likely or unlikely, probable or improbable, that a defendant fully and precisely understood what he was doing in regard to a transaction and, where relevant, in relation to others.

Now in order to convict a defendant on any count with which he is charged in this indictment, it is necessary for you to find beyond a reasonable doubt that that defendant with respect to any particular charge acted unlawfully, knowingly and wilfully. I am going to be

using these words throughout this charge so I am going to define them for you now.

Unlawfully, obviously, means contrary to law.

An act is done knowingly if it is done voluntarily and purposefully and not because of mistake, accident, mere negligence or other innocent reason.

An act is done wilfully if it is done knowingly, deliberately and with an evil motive or purpose.

In determining whether a defendant has acted wilfully, it is not necessary for the Government to establish that the defendant knew that he was breaking any particular law or any particular rule, but it must show a bad purpose or motive on the part of that defendant.

Consequently with respect to Count 1, the conspiracy count, you must find that a defendant acted knowingly and wilfully and that he knew that interstate commerce or the mails would be involved in carrying out the conspiracy as he saw it.

With respect to Counts 2 to 6, you must find that the defendnt knew that the mails would be used in connection with any scheme or plan to defraud or to obtain money by false or misleading representations or that he could reasonably have foreseen that use of the mails would be involved.

With respect to Counts 7 and 8, you must find that the defendant knew or could reasonably have foreseen use of the mails with respect to those fraud counts.

With respect to Counts 9 to 13, you must find that the defendant knew or could reasonably have foreseen that use of the mails would be involved in those mail fraud counts.

With respect to Counts 14 to 18, you must find that the defendant knew that interstate commerce or use of the mails would be involved. In addition, you must find that he knew that the stock involved should have been registered or that he acted with reckless disregard for this fact and with a conscious purpose to avoid learning this fact.

With respect to Counts 19 and 20, you must find that the defendant knew that use ofthe telephone or some other wire communication would be involved in connection with those wire fraud counts or that the defendant could have reasonably foreseen such use.

With respect to each defendant and each count, as you undertake to decide whether or not he acted with the requisite knowledge and wilfulness required in that count, you may consider whether you find in the evidence circumstances of secrecy or deviousness or attempts to conceal

the real nature of any of the transactions in which he may have engaged. You may also consider whether you find that the particular defendant whom you are then considering had actual knowledge of some act in which some other participant engaged. You may consider the extent to which the documents were made up, if you so find, to conceal what you regard as the actual facts in the transaction.

You may ask yourselves such questions as these:

Were the transactions normal or abnormal? If abnormal, what is the credible evidence tending to explain the abnormality?

Did the conduct of a particular defendant follow a pattern which was strikingly similar to the conduct of other co-conspirators?

Did duch acts and conduct indicate close timing and effective cooperation?

Consider the motive, if any, of the defendant. Did he have a pecuniary or financial interest in the outcome of any of these transactions? How great was that motive, if any? Was there a profit motive?

In deciding whether a particular defendant under consideration by you knew the stock was not exempt from registration, you should consider all the circumstances, such as how the defendant handled the transaction, how he

rms 7134

conducted himself. Do his actions betray guilty knowledge that he was dealing with stocks that should have been registered or are his actions those of a duped, innocent man?

Where knowledge of a particular fact is an element of the crime charged, for example, that the law requires that certain stock offered to the public for sale be registered, you may find that a defendant acted with guilty knowledge if you find that the particular defendant you are then considering acted with reckless disregard for the true facts and with the conscious purpose to avoid learning the truth, even though you may find that defendant was not specifically aware of the true facts.

In other words, as you assess each defendant's state of mind to determine whether he acted wilfully, that is, whether or not he was aware of facts which made his alleged conduct criminal, for example, selling stock which should have been registered, I instruct you that the law is that a defendant cannot avoid criminal liability by deliberately closing his eyes to facts he had a duty to see, and by recklessly stating as fact a thing of which he was ignorant, and by consciously avoiding the discovery of the true facts of the matter.

With respect to the counts charging distribution

of unregistered stock, it is not necessary that the Government prove that a defendant knew to a certainty the stock was not exempt from the registration requirement of the securities laws. The required knowledge is established if you find that a particular defendant acted with reckless disregard as to whether the stock was exempt from registration and with a conscious purpose to avoid learning whether the stock was exempt by law.

In deciding whether or not a defendant knew that a transaction was not exempt, you should consider all the relevant facts in evidence about his background, his employment or profession, his personal and business experience in securities. In this light, you may consider that a person holding himself out as a member of the legal profession or a secutities broker or a businessman may not escape criminal liability when he shuts his eyes to what was plainly to be seen or represents that he has knowledge he knows he does not possess. A lawyer, a securities dealer or a businessman, cannot recklessly proceed, or counsel others to proceed, in the face of indications, of which he is aware, that there is an obvious risk that the course embarked upon is unlawful and consciously avoids learning the true facts or the true legal requirements.

Of course, this does not mean that any mistake of law or misstatement of fact should subject such a person to criminal liability merely because more skilled practitioners would not have made them. But it does mean that a lawyer, a securities broker or a businessman cannot avoid criminal sanctions by ignoring warning signals and then pleading he was just doing the best job he was able to do.

If you find with respect to any count that a defendant believed that the stock was registered or was exempt or that the defendant was otherwise acting because of honest mistake, honest misunderstanding, good faith reliance on adv ice of counsel, or negligence on his part, or other innocent reason, you must acquit the defendant on that count. This is so because he would not have the requisite criminal knowledge and wilfulness.

In determining whether a defendant acted wilfully and with knowledge, you may consider the reliance he placed on advice of counsel. But legal advice does not under all circumstances constitute a complete defense. If that were the case, no matter how unlawful a defendant's conduct might be and regardless of the consciousness of wrongdoing on his part and on the part of his legal adviser, the advice of counsel would operate to confer immunity from

crime. Such is not the case.

However, if a man honestly and in good faith seeks the advice of a lawyer as to what he may lawfully do, and he fully and honestly lays all the facts before his counsel and in good faith honestly follows that advice, relying upon it and believing it to be correct, and only intends that his acts shall be lawful, he could not be convicted of a crime which involves wilful and unlawful intent, even if the legal advice which he received was erroneous.

If you find that any defendant charged in these counts was advised by an attorney that the stock involved in a particular count was exempt from registration or gave him some other legal opinion upholding the legality of the transaction, you may consider that evidence, along with other evidence in the case which you believe as to the defendant's knowledge of the facts, his knowledge of the facts available to the attorney, and his own awareness of the law and his own experience in securities, in determining whether or not the defendant in good faith sought and honestly believed and relied on advice given to him by the attorney.

You must bear in mind that no person can wilfully and knowingly violate the law and attempt to excuse

himself from the conseguences by simply pleading that he followed the advice of a lawyer. And if you find that a defendant asserting this plea sought legal adv ice in bad faith or deliberately provided inaccurate material facts to the lawyer, or did not follow his advice entirely, that defendant may not rely upon advice of counsel as a defense.

Further, if you find thatin seeking advice with respect to the legality of a transaction that a defendant deliberately misstated or omitted material facts, you may infer from that conduct that he knew that the transaction, when viewed in light of all its true facts, was not exempt from the registration requirements of the Secutities laws. Likewise, if you find that a defendant purported to rely on an opinion, knowing that the opinion was based on misstated or omitted facts, you may infer that the defendant knew that the nature of the transaction, if viewed in light of its true facts, required the stock to be registered.

In this case, for example, defendants Rubinson, Chester, Feiffer and Reynolds are charged with transporting and selling via interstate facilities Stern-Haskell stock which had not been registered as required by law but which they knew should have been registered before such transportation and sale. In response all of these defendants claim that they did not know the law required that the

Stern-Haskell stock in question be registered with the SEC before being sold, that the stock they transported or sold was exempt from registration, and that it was not their intention to violate the law. With respect to these disputed issues as to the knowledge and intent of each of these defendants, you are to apply the principles of law which I have just discussed to determine what each defendant knew as to the registration requirement and what his intent was at the time in question.

Further, on the issues of knowledge and intent, the Government has tendered evidence which, it claims, shows contemporaneous activity with respect to stock transactions by defendant Rubinson, Feiffer, Chester and Reynolds from which you can infer what their knowledge and intent was. Specifically, it has introduced evidence relating to Mobile Homes and Distan Industries which it claims show the sale or attempted sale of the stock of these two companies by defendants Rubinson, Feiffer, Chester and Reynolds.

These four defendants are not on trial for events relating to those similar transactions. You may, however, in determining whether these defendants acted with guilty knowledge or unlawful intent on the charges before you consider the fact, if you find it true, that they engaged

in other similar transactions. However, you are to consider such evidence only on the question of the knowledge and intent of these found defendants and not with respect to any other elements of the crimes charged.

Defendants are not on trial here for using a false name or nominee in connection with the sale of stocks. However, if you find, beyond a reasonable doubt, that a particular defendant used a name other than his own in order to avoid subsequent identification, that would be a fact from which you may, but need not, infer a consciousness of guilt on his part. This fact may be considered by you along with all the other evidence in the case.

The evidence shows that several telephone conversations between the defendants Feiffer and Rubinson and the witness Saul Weitzman were recorded by Weitzman who had attached a recording device to his telephone.

I instruct you that the Government's use of these tapes in this case was a lawful use of that evidence and that its use did not violate the rights of any of these defendants. This is so because Saul Weitzman who was a participant in the telephone conversations made the recordings.

If the Government has failed to call a witness who was equally available to both sides, you may not draw

an inference that his testimony would have been unfavorable to the prosecution.

I would also instruct you that there is no presumption against the Government from its failure to call a witness when it appears that his testimony would be merely cumulative or repetitious and of no greater value than that of witnesses who have in fact testified.

I charge you that proof of motive is not a necessary element of crimes with which a defendant is charged. Proof of motive does not establish guilt, nor does want of proof of motive establish that a defendant is innocent.

If the guilt of a defendant is shown beyond a reasonable doubt, it is immaterial what the motive for the crime may be or whether any motive be shown, but the presence or absence of motive is a circumstance which the jury may consider as bearing on the intent of the defendant.

There has been testimony here as to the previous good character of a defendant. You should consider such evidence of reputation together with all the other facts and all the other evidence in the case in determining the guilt or innocence of a defendant.

Evidence of a defendant's reputation as to good character, or as to those traits of character ordinarily

involved in the commission of the crimes charged, may give rise to a reasonable doubt, since you think it improbable that a person of good character in respect to these traits would commit such a crime.

But if upon all the evidence, you are satisfied beyond a reasonable doubt that the defendant is guilty, a showing that he previously enjoyed a reputation for good character does not justify or excuse the offense and you should not acquite him merely because you believe he is a person of good repute.

Now I want to tell you about expert witnesses. You will recall that there have been several expert witnesses called during the trial. Each expert gave testimony concerning his qualifications as an expert in his field. When a case involves a matter of science or art or some field requiring special knowledge or skill not ordinarily possessed by the average person, an expert is permitted to state his opinion for the information of the Court and the jury.

The opinions stated by each expert who testified before you were based on particular facts, as the expert, himself, observed them and testified to them before you. or were based upon facts which the attorney who questioned him asked him to assume for the express purpose of stating

an opinion based upon the assumed facts.

You may reject an expert's opinion if you find the facts to be different from those which formed the basis for his opinion. You may also reject his opinion, if, after careful consideration of all the evidence in the case, expert and other, you disagree with the opinion.

In other words, you are not required to accept an expert's opinion to the exclusion of the facts and circumstances disclosed by other testimony. Such an opinion is subject to the same rules concerning reliability and credibility as the testimony of any other witness. It is given to assist you in reaching a proper conclusion and it is entitled to such weight as you find the expert's qualifications warrant and must be considered by you, but it is not controlling upon your judgment.

During the trial, there has been admitted in evidence certain exhibits which were referred to as charts. These exhibits are not themselves independent proof. They purport to be only pictorial or visual representations or resumes of information or data as set forth in the testimony of a witness or in documents that are exhibits in evidence.

If the information contained in the books or in the testimony is then converted into a visual form or a

pictorial form and the chart is marked as an exhibit, the chart does n ot have an independent value as proof because it is only based upon the testimony or the books. It is a visual aid, just to help you remember what is in the books and what is in the testimony and, therefore, you will understand that charts are not, by themselves, independent evidence.

The evidence in this case is the testimony which you have heard, the stipulations by counsel, and the exhibits actually received in evidence. The charts are no better than the books or the testimony on which they are based.

If is for you to decide whether the charts correctly present the data set forth in the testimony or exhibits wupon which they are based. Therefore, you are to give no greater consideration to these charts than you would give to the testimony and exhibits upon which they are based.

With this instruction in mind, you are entitled to consider the charts received in evidence if you find 4hat they are of assistance to you in analyzing the evidence and in understand the evidence.

The Government claims that the testimony of the witness Saul Weitzman is corroborated by the tape recordings

of telephone conversations which you heard.

You will remember the transcripts of those tape recordings were received in evidence and that you read them as you listened to the tapes. Those transcripts were given you for your convenience only, because it is your recollection as to what you actually heard that prevails. Nonetheless, if during the course of your deliberations you desire to see the transcripts, or any of them, you may do so by communicating with me in writing. That applies not only to the transcripts, it applies to every exhibit in the case.

But bear in mind that these transcripts are merely submitted for your convenience and in the long run the only thing that matters is what you have heard from the tapes themselves. And if what you hear or heard differs in any way from what appears on what transcript, you depend and rely only upon what you hear.

You see, you as jurors are the judges of the facts in this case, and quite apart from what anybody else has put on paper you must make a determination of what it is that you hear or have heard when the tapes were played. And, of course, you can have any of the tapes played again if you desire.

As I told you when the trial commenced, an

indictment is not proof or evidence. It is merely an accusation. It is a method or technique or procedure whereby persons who are accused by a grand jury of crimes are brought into court, and then their guilt or innocence is determined by a trial jury such as you are.

Also, you are to draw no unfavorable inferences against defendants merely because representatives of the SEC made inquiries into the transactions which are the subject matter of the testimony of this trial.

The indictment in this case names ten defendants in all. Only eight defendants are on trial before you. These eight defendants are the only defendants whose guilt or innocence you are to decide, although, of course, in deciding the guilt or innocence of those now on trial you must consider whatever evidence there may be of acts and conduct and statements of defendants and co-conspirators who are not on trial.

The defendants are charged with violating and conspiring to violate the Securities Act of 1933 and the Securities Exchange Act of 1934. I am going to read to you some of the specific language of these two Acts, but, before I do so, I am going to explain their history and purpose so that their provisions will become more meaningful to you.

The Securities Act of 1933 sets forth a comprehensive plan to achiev its objective of protecting the investing public. Congress recognized that as a rule the average investor with respect to the purchase of securities is in no position, as he is when he buys a suit or similar commodity, to make a personal investigation of the worth of the securities or the assets or operations of the company which may reflect the true value of the stock at issue. It was in recognition of this fact, and in recognition of the fact that the sales of securities often involve the use of the mails and other interstate facilities regulated by Congress that Congress enacted the registration provisions of the 1933 Act.

The provisions require that before a security is offered to the public, the corporation issuing the security must file with the SEC a registration statement making a full and accurate disclosure of all material facts relating to its affairs.

Thus, Section 5 of the Securities Act was thought to be necessary because securities are by their nature quite different from most other types of merchandise for which there are established public markets. A person who wishes to buy a new car or household appliance, or, for that matter a house, can pretty well determine from

personal inspection the quality of the product and the reasonableness of the price in relation to other competing products. This is not so with respect to a share of stock.

As a practical matter, it impossible for the average investor to differentiate between securities of little or no value, those of a highly speculative nature and those offering at least reasonable prospects of a satisfactory return on his investment. He cannot himself make such distinctions because he is unable to make a personal investigation of the properties and operations of the company issuing this stock. He must, therefore, rely upon available oral and written information about the company, its financial condition, its assets, its management, its operations, its products, its resources, its prospects and the terms and conditions respecting its securities.

The philosophy embodied in this statute is one of disclosure. The principal purpose of the Federal Securities Act is to require a full and fair disclosure of material facts to prospective purchasers of securities. This Act is concerned, by and large, with sales of securities either directly by the issuing company or by persons in control of or affiliated with those in control of the

issuing company. The Act does not empower the SEC to pass upon the merits of securities. The Act's sole function is to require, through registration, disclosure of all pertinent facts necessary to reveal the substance or lack of substance of securities being offered for sale to members of the public. Therefore, Section 5 of the Securities Act requires that before any security is offered to the public, the corporation which issues the security file a registration statement making a full and accurate disclosure of material facts relating to the company's properties, its business, its management, its principal stockholders, its financial condition, supported by certified balance sheets and profit and loss statements and the amount and types of stock outstanding.

The reason the law requires a full disclosure of all these material facts is to give the public access to information necessary to make a realistic appraisal of the merits of the securities offered for sale and thus exercise an informed judgment in deciding whether to buy them.

The sum and substance of Section 5 in so far as it applies to this case is that it is unlawful for an issuer, or underwriter, or anyone who is in control of a company to use the mails to sell shares in that company

without first filing a registration statement regarding the proposed sale.

Having enacted the Securities Act of 1933 to provide for full and fair disclosure of the nature of stock being offered for sale to the investing public, Congress, mindful of the many schemes, artifices and devices which might be used to defraud the investing public, enacted the Securities Exchange Act of 1934 to provide for the regulation of securities exchanges and of over-the-counter markets to prevent inequitable and unfair practices on such exchanges and markets, and for other purposes.

The idea of a free and open public market is built upon the theory that competing judgments of buyers and sellers, as to the fair price of a security, brings about a situation where the market price reflects as nearly as possible a just price. Any manipulation or deceptive practice whether it be excessive trading, the creation and maintenance of an artificial market by contrived purchases and sales, payments to brokers, dealers, or securities traders to induce them to trade a particular security or to trade it at an artificial price, defeats the function and purpose of a true and free market.

The charges, as you know, center in the main on the Federal Securities laws which I have just described to

you.

The indictment contains twenty counts.

The first count of the indictment charges all eight defendants on trial, and others, with the crime of conspiracy to violate those securities laws which prohibit selling stock in interstate commerce without registration and which prohibit frauds in securities transactions. They are also charged with conspiracy to violate other federal laws which prohibit frauds by mail and frauds by wire.

These laws which defendants are charged with conspiring to violate provide in pertinent part as follows:

The Securities Act of 1933 -- U.S.C., Section 77e -- relating to the sale of unregistered stock provides in pertinent part as follows:

Section 77e. Prohibitions relating to interstate commerce and the mails

(a) Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly --

* * *

(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation any such security

for the purpose of sale or for delivery after sale.

* * *

(2) to carry or cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of subsection (a) of Section 77j of this title.

(c) It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy th rough the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security.

The Securities Act of 1933 -- 15 U.S.C. Section 77j(a) sets forth a schedule of information required in a registration statement. One of the requirements, as detailed in Section 77aa(25), is that a certified financial statement be filed.

The Securities Act of 1933 -- 15 U.S.C. Section 77q -- relating to fraud in the sale of securities

reads in part as follows:

(a) It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly --

(1) to employ any device, scheme, or artifice to defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

(b) It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter investment service, or communication which, though not purporting to offer a security for

sale, describes such security for a consideration received . . . directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt . . . of such consideration and the amount thereof.

* * *

The Securities Exchange Act of 1934 -- 15 U.S.C. Section 78j relating to manipulative and deceptive devices in the sale of securities, reads in part as follows:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails . . . : --

* * *

(b) To use or employ, in connection with . . . sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Rule 10(b)(5) which has been promulgated by the Securities and Exchange Commission pursuant to Section 78j reads as follows:

It shall be unlawful for any person directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(a) To employ any device, scheme, or artifice to defraud.

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

The Mail Fraud Statute, 18 U.S.C., Section 1341, reads in pertinent part as follows:

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises . . . for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter

or thing whatever to be sent or delivered by the Post Office Department, . . . or knowingly causes to be delivered by mail according to the direction thereon . . . any such matter or thing, . . . shall be guilty of a crime.

The Wire Fraud Statute, 18 U.S.C., Section 1343, reads in pertinent part as follows:

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire . . . communication in interstate or foreign commerce any writings . . . for the purpose of executing such scheme or artifice, shall be guilty of a crime.

The other nineteen counts of the indictment charge various of the defendants with actual violations of these laws. These other counts are known as substantive counts.

Counts 2 through 8 charge defendants Rubinson, Feiffer, Chester, Haskell, Levine, Wax and Gardner with fraud in violation of the securities laws.

Counts 9 through 13 charge these same defendants with fraud by mail.

Counts 14 through 18 charge defendants Rubinson, Feiffer, Chester, and Reynolds with transporting and selling unregistered stock.

Finally, Counts 19 and 20 charge defendants Rubinson, Chester and Gardner with fraud by wire.

Only defendant Gardner is named in Count 20.

At this time we are going to take a ten-minute recess.

(Recess.)

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(In open court. Jury present.)

THE COURT: By pleading not guilty to each count in which a defendant is named, the defendant has put into issue each of the essential elements of the crime charged. As a result, if a defendant is to be convicted, the Government has the burden of proving each of the essential elements of the crime charged beyond a reasonable doubt. Consequently, I shall now read each charge. Then I shall enumerate the essential elements of each charge. Then I shall discuss each element in greater detail.

If you find as to any defendant you are then considering that the Government has failed to establish beyond a reasonable doubt any one of the essential elements of the particular crime charged as to that defendant, then you must find that defendant not guilty of that charge.

On the other hand, if you find that the Government has carried its burden of proof, and has established beyond a reasonable doubt every essential element of a crime charged as to a particular defendant, then you may convict that defendant of that particular charge.

Count One:

The Grand Jury charges:

1. From on or about the 1st day of August, 1968, and continuously thereafter up to and including the

date of the filing of this indictment, in the Southern District of New York and elsewhere, Norman Rubinson, Sidney Stein, Albert Feiffer, William Chester, Edgar Reynolds, Jerome Haskell, Lawrence Levine, Walter Wax, Philip Kaye, and Michael Gardner, the defendants herein, and Saul Weitzman, Louis Larry Hochen, Harry Silber, Arthur Kravetz, Yehuda Weiss and B'Noth Jerusalem, named herein as co-conspirators but not as defendants, and other persons to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to commit certain offenses against the United States, to wit, violations of the Securities Act of 1933 and the Securities Exchange Act of 1934 (Sections 77e, 77q, 77x, 78j and 78ff of Title 15, United States Code) and Rule 10b-5 of the Rules and Regulations of the United States Securities and Exchange Commission and Sections 1341 and 1343 of Title 18, United States Code.

2. It was a part of said conspiracy that said defendants and co-conspirators unlawfully, wilfully and knowingly would, directly or indirectly, make use of means and instruments of transportation and communication in interstate and foreign commerce and of the mails to sell securities, to wit, common stock of Stern-Haskell, Inc., at a time when no registration statement as to said

securities was in effect with the United States Securities and Exchange Commission.

3. It was further a part of said conspiracy that said defendants and co-conspirators unlawfully, wilfully and knowingly in the offer and sale of securities, to wit, common stock of Stern-Haskell, Inc., by the use of means and instruments of transportation and communications in interstate commerce and by use of the mails, would directly and indirectly (a) employ devices, schemes and artifices to defraud; (b) obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engage in transactions, practices and courses of business which operated and would operate as a fraud and deceit upon the purchasers of the common stock of Stern-Haskell, Inc., and upon any and all persons to whom the said defendants and co-conspirators, directly and indirectly, would attempt to sell the aforementioned securities.

4. It was further a part of said conspiracy that said defendants and co-conspirators in connection with the purchase and sale of securities, to wit, common stock of Stern-Haskell, Inc., would, directly and indirectly, use

means and instrumentalities of interstate commerce and the mails to use and employ manipulative and deceptive devices and contrivances in contravention of Rule 10b-5 (17 CFR Section 240.10b-5 of the Rules and Regulations of the United States Securities and Exchange Commission.

5. It was further a part of said conspiracy that said defendants and co-conspirators, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, unlawfully, wilfully and knowingly, and for the purpose of executing said scheme and artifice and attempting so to do, would place and cause to be placed in post offices and authorized depositories for mail matter, and would cause to be delivered by mail according to the direction thereon, certain matter to be sent and delivered by the United States Postal Service.

6. It was further a part of said conspiracy that said defendants and co-conspirators, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, unlawfully, wilfully and knowingly, would transmit and cause to be transmitted by means of wire communication in

interstate and foreign commerce, writings, signs, signals and sounds for the purpose of executing such scheme and artifice.

7. Among the means by which the defendants and co-conspirators would and did carry out the said conspiracy were the following:

(a) Defendants Norman Rubinson, Sidney Stein, William Chester and Jerome Haskell arranged for the issuance and distribution of 200,000 shares of the common stock of Stern-Haskell, Inc., without the filing by Stern-Haskell, Inc., of a registration statement, prospectus or certified financial statements with the United States Securities and Exchange Commission.

(b) Defendants Norman Rubinson and William Chester arranged for Stock Transfer Agency, which they controlled, to act as the transfer agent of Stern-Haskell, Inc.

(c) Defendants Norman Rubinson, Sidney Stein, Albert Feiffer, William Chester, Edgar Reynolds and Jerome Haskell, arranged to own or control over 150,000 of said 200,000 shares of the common stock of Stern-Haskell, Inc.

(d) Defendants Norman Rubinson, William Chester and Jerome Haskell arranged for the issuance of an additional 350,000 shares of the common stock of Stern-

Haskell, Inc., which would be owned or controlled by themselves.

(e) Defendants Norman Rubinson, Sidney Stein, Albert Feiffer, Lawrence Levine, Walter Wax, Jerome Haskell and Michael Gardner arranged for the establishment and maintenance of a public market in the common stock of Stern-Haskell, Inc., at artificially inflated, manipulated and fraudulent prices ranging from one dollar per share to over four dollars per share.

(f) Defendants Norman Rubinson, Jerome Haskell and Michael Gardner arranged for defendant Michael Gardner to receive 50,000 shares of the common stock of Stern-Haskell, Inc., at a price of ten cents per share at a time when the market price of said shares was in excess of two dollars per share, in return for the assistance of Michael Gardner in distributing the common stock of Stern-Haskell, Inc., to the public at artificially inflated, manipulated and fraudulent prices.

(g) Defendants Norman Rubinson, Sidney Stein and Albert Feiffer made secret cash payments to defendants Lawrence Levine, Philip Kaye and Walter Wax in return for the distribution by defendants Lawrence Levine, Philip Kaye and Walter Wax of the common stock of Stern-Haskell, Inc., to the public at artificially inflated, manipulated and

fraudulent prices.

(h) Defendants Lawrence Levine, Walter Wax and Philip Kaye arranged for recommendations to be made to members of the investing public to purchase the common stock of Stern-Haskell, Inc., without disclosing said secret cash payments, or said defendants' activities in connection with the marketing of said securities, or the facts that the prices of said securities were artifically inflated, manipulated and fraudulent, or other facts which would have been disclosed in a prospectus if one had been issued, such undisclosed facts being material facts, necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

(i) Defendants Norman Rubinson, Sidney Stein, Albert Feiffer, William Chester, Edgard Reynolds, Lawrence Levine, Philip Kaye, Walter Wax and Michael Gardner directly and indirectly sold over 75,000 shares of the common stock of Stern-Haskell, Inc. to the public at artificially inflated, manipulated, and fraudulent prices, at a time when no registration statement was in effect as to said securities.

(j) Defendants Norman Rubinson, Sidney Stein, Albert Feiffer, William Chester, Edgar Reynolds, Jerome Haskell, Lawrence Levine, Philip Kaye, Walter Wax and

Michael Gardner, through the activities described above in this paragraph, would and did cause members of the investing public to lose substantial amounts of money.

Overt Acts.

In furtherance of said conspiracy, and to effect the objects thereof, the following overt acts were committed within the Southern District of New York and elsewhere:

1. In or about May and June, 1969, defendants Norman Rubinson and Sidney Stein paid a quantity of cash to defendant Philip Kaye in the vicinity of 360 East 72nd Street, New York, New York.

2. In or about May and June, 1969, defendant Lawrence Levine received a quantity of cash.

3. In or about May and June, 1969, defendant Walter Wax received a quantity of cash.

4. On or about June 6, 1969, defendants Sidney Stein, William Chester and Edgar Reynolds met in the vicinity of 360 East 72nd Street, New York.

5. On or about June 6, 1969, defendant Albert Feiffer endorsed a check from Tessel, Paturick & Ostrau, Inc. in the amount of approximately $11,941.75.

6. On or about June 13, 1969, defendant Albert Feiffer endorsed a check from Tessel, Paturick & Ostrau,

Inc., in the amount of approximately $10,264.94.

7. On or about June 9, 1969, defendant Lawrence Levine made a transaction in the common stock of Stern-Haskell, Inc.

8. On or about June 12, 1969, defendant Walter Wax recommended the purchase of the common stock of Stern-Haskell, Inc. to a customer.

9. In or about July 1969, defendants Norman Rubinson and Jerome Haskell met in New York, New York.

10. On or about July 18, 1969, defendant Michael Gardner received 50,000 shares of the common stock of Stern-Haskell, Inc.

(Title 18, United States Code, Section 371.)

In Count One of the indictment, defendants are thus charged with conspiracy to violate the federal laws which I just read to you in violation of the federal conspiracy statute, which reads in relevant part as follows:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be guilty of a crime."

Thus, if one conspires with another to violate

any federal law and one of the conspirators does or performs any overt act, in furtherance of the conspiracy, each is guilty of a crime.

What is a conspiracy.

A conspiracy is a collective criminal agreement or partnership in crime. A conspiracy presents a greater potential threat to society than the unlawful act of the lone wrongdoer. Thus, concerted action for criminal purposes often makes possible the attainment of ends more complex than those which an individual, acting alone, could accomplish. Group association increases the likelihood that the criminal objective will be successfully realized and renders detection more difficult than in the instance of the sole wrongdoer.

It is because of these and other reasons that Congress made a conspiracy, or concerted action to violate the federal law, a federal crime, entirely separate, distinct and different from any other offense which may be the objective of the conspiracy.

In order to prove the crime of conspiracy, which is charged as to all defendants in Count 1 of the indictment, the Government must establish to your satisfaction, beyond a reasonable doubt, each of the following essential elements of the crime of conspiracy.

First: The existence of the conspiracy as alleged in the indictment; that is, that sometime between August 1, 1968 and June 4, 1974, an agreement existed between one of the defendants on trial and any other defendant or co-conspirator, whether or not on trial or named in the indictment.

Second: That it was part of the agreement to accomplish one or more of the following objectives: (1) to sell unregistered stock in violation of Section 5 of the Securities Act of 1933; or (2) to employ devices, schemes, or artifices to defraud in violation of Section 17 of the Securities Act of 1933, or (3) to use the mails to employ manipulative and deceptive devices and contrivances in violation of Section 10 of the Securities Exchange Act of 1934 andRule 10b-5 of the Securities and Exchange Commission; (4) to employ fraud by mail in violation of Section 1341 of Title 18 of the United States Code, or (5) to employ fraud by wire in violation of Section 1343 of Title 18 of the United States Code.

Third: That the particular defendant you are then separately considering, knowingly and wilfully became a participant of or a member of the conspiracy; and,

Fourth: That at least one of the co-conspirators, whether or not a defendant here on trial, knowingly

committed at least one of the overt acts set forth in the indictment in furtherance of the conspiracy and during the period of the conspirach.

First Element: Existence of conspiracy.

What is a conspiracy? A conspiracy is a combination, or agreement, of gwo or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means.

The gist of the crime of conspiracy is the unlawful combination or agreement to accomplish one or more of the unlawful objectives alleged. Whether or not the defendants accomplished what it is alleged they conspired to do, that is, whether or not they actually achieved the unlawful goals alleged, is immaterial to the question of guilt or innocence.

A conspiracy has sometimes been called a partnership in crime in which each member becomes the agent of every other member.

To establish a conspiracy, the Government is not required to show that two or more persons sat around a table and entered into a solemn compact, orally or in writing, stating that they have formed a conspiracy to violate the law, setting forth the details of the plan, the

means by which the unlawful project is to be carried out, or the part to be played by each co-conspirator. Indeed, it would be extraordinary if there were such a formal agreement or specific oral agreement.

Your common sense will tell you that when men, in fact, undertake to enter into a criminal conspiracy, much is left to unexpressed understandings. Conspirators do not usually reduce their agreements to writing or acknowledge them before a notary public, nor do they publicly broadcast their plans.

From its very nature, a conspiracy is al most invariably secret in its origins and in its execution. Therefore, it is sufficient if you find that two or more persons in any manner, through any contrivance, impliedly or tacitly, came to a com mon understanding to violate the law. Express language or specific words are not required to indicate assent or attachment to a conspiracy, nor is it required to find that all the co-conspirators alleged in the indictment joined in the conspiracy in order to find that a conspiracy existed. You need only find that one alleged co-conspirator or a defendant entered into an unlawful agreement with one or more persons in order to find that a conspiracy existed.

In determining whether there has been an unlaw-

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ful agreement, you may judge acts and conduct of the alleged co-conspirators which are done to carry out an apparent criminal purpose. The old adage, "action speaks louder than words," is applicable here.

Usually, the only evidence available of a conspiracy is that of disconnected acts which, however, when taken together in connection each other show a conspiracy to secure a particular result as satisfactorily and as conclusively as more direct proof. Proof concerning the accomplishment of the objective of the conspiracy may be the most persuasive evidence of the existence of the conspiracy itself. Success of the venture, if you believe it was successful, may be the best proof of the existence of the conspiracy.

In determining whether the conspiracy charged in this indictment actually existed, you may consider evidence of the acts and conduct of the alleged conspirators as a whole and the reasonable inferences to be drawn from such evidence.

If upon such consideration of the evidence you find beyond a reasonable doubt that the minds of at least two of the alleged co-conspirators met in an understanding way and that they agreed, as I have just explained a conspiratorial agreement to you, to work together in further-

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ance of the unlawful scheme alleged in the indictment, then proof of the existence of the conspiracy, but only of its existence, is complete.

The period of time charged in the indictment runs from on or about August 1, 1968 to the date of filing of the indictment, June 4, 1974. It is not necessary for the Government to prove that the conspiracy started and ended on those specific dates. It is sufficient if you find that a conspiracy was formed and that it existed for some substantial time within the period set forth in the indictment and that at least one overt act was committed during that period.

A conspiracy continues for as long as the evidence shows the conspirators intended to continue it. Such intention may be inferred fromthe activities of the conspirators in furtherance of any of the unlawful purposes of the conspiracy.

If you find that a conspiracy existed, the Government is not required to prove that all of the means alleged in the indictment to further the conspiracy in fact were brought into play. If you find that one or more of the means or methods were used to achieve the objective, that would be sufficient.

Second Element: Purposes of the conspiracy.

The indictment charges that the alleged conspiracy included at least five parts or objectives, each relating to the use of the Stern-Haskell stock.

If you find that a conspiracy or agreement existed, as I have explained it to you, then, in order to establish this second element the Government must prove and you must find that the conspiracy included at least one of the five unlawful objectives alleged in the indictment.

In order to satisfy this second element of the conspiracy the Government need not prove, and you need not find, all of the unlawful purposes alleged in the indictment. You need only find one of them.

I will restate the five unlawful objectives alleged in the indictment: (1) to sell unregistered Stern-Haskell stock in violation of the securities laws; (2) to employ a scheme or artifice to defraud in connection with the sale of Stern-Haskell stock in violation of the Securities Act of 1933; (3) to employ manipulative and deceptive devices and contrivances in connection with a purchase or sale of Stern-Haskell stock in violation of Section 10, of the Securities Exchange Act of 1934 and Rule 10b-5 of the Securities and Exchange Commission; (4) to employ fraud by mail; or (5) to employ fraud by wire in connection with transactions in Stern-Haskell stock.

Third Element: Individual Membership in a Conspiracy.

If you do conclude that the conspiracy as charged did exist, you must next determine whether a particular defendant on trial was a member; that is, whether he actual ly participated in the conspiracy with knowledge of at least some of its unlawful purposes and in furtherance of its unlawful objectives.

To find the defendant's membership in a conspiracy you must find that he knowingly and intentionally participated therein. Thus, mere knowledge by a defendant of the existence of the conspiracy or of any illegal act on the part of an alleged conspirator is not sufficient to establish his membership in the conspiracy. The Government must establish beyond a reasonable doubt that the defendant, aware of its basic purposes and objectives, entered into the conspiracy with a specific criminal intent, that is, with a purpose to violate the law. So if the defendant, with understanding of the unlawful character of the conspiracy, intentionally encourages, advises or assists, for the purpose of furthering the illegal undertaking, he thereby becomes a knowing and wilful participant, a conspirator.

In determining whether the defendant was a

member of a conspiracy you may consider all of the evidence before you.

The guilt of a conspirator is not governed by the extent or duration of h is participation in the conspiracy, or whether he had knowledge of all of its operations. Thus, some conspirators may play major roles, while others play minor roles.

Even if one defendant joined the conspiracy after it was formed, and was engaged in it to a degree more limited than other co-conspirators, he is equally culpable, as long as he was a co-conspirator.

In other words, it is not required that a pwrson be a member of the conspiracy from its very start -- he may join it at any point during its progress, and may be held responsible for all that has been done thereafter during its existence and while he remains a member. Simply stated, using the partnership analogy again, by becoming a partner he assumes all the liabilities of the partnersh ip, including those that occurred before he became a member.

It is not necessary that a defendant be fully informed of all the details or the entire scope of the conspiracy in order to justify an inference of knowledge on his part. However, one of the things which you must find is that the defendant knew that interstate commerce

facilities or the mails would be used. Legitimate and reasonable inferences of such knowledge can be drawn from circumstantial as well as direct evidence.

In determining whether a defendant was a member of the conspiracy, you must determine whether he participated with knowledge of at least one of its unlawful purposes.

All of the conspirators need not be acquainted with each other. They may not have previously associated together. One of the defendants may know only one other member of the conspiracy, but if he enters into an unlawful agreement with that other member of the conspiracy, he becomes a party thereto. The question is: Did a defendant join the others with awareness of at least some of the basic purposes and aims of the conspiracy? If so, then he adopts as his own the past and future acts of all the other conspirators.

I want to caution you, however, that mere association with one or more conspirators does not make one a member of a conspiracy. Nor is knowledge of a conspiracy, without participation therein, sufficient to constitute membership. What is necessary is a finding by you that the particular defendant whom you are then considering participate with knowledge of at least some of

the purposes of the conspiracy and with intent to aid in the accomplishment of those unlawful ends.

Fourth Element: Overt Act.

As I have already mentioned, an essential element of the crime of conspiracy, is that one overt act to effect the objective of the conspiracy be committed by at least one of the co-conspirators. An overt act is any step, action or conduct which is taken to achieve or further the objective of the conspiracy.

Obviously, for people to take an airplane trip, make a payment, or have a meeting, is not in and of itself criminal conduct. But when, as the Government charges, and if you so find, that the purpose of the trip, payment or meeting was to further a scheme which had as its purpose the selling of unregistered stock which the law required to be registered, or to manipulate the prices of a stock, then those meetings or payments shed their innocent character and become overt acts to further the purpose of an illegal enterprise.

It is not necessary for the Government to prove that each member of the conspiracy committed an overt act or participated in the particular overt act, since the act of any one done in furtherance of the conspiracy becomes the act of all the other members. Also, the Government

is not required to prove all of the overt acts. It is sufficient if it proves the commission of at least one of the overt acts stated in the indictment at or about the time alleged.

When people enter into a conspiracy to accomplish an unlawful end, they become agents for one another in carrying out the conspiracy. Hence, the acts or declarations of one in the course of the conspiracy and in furtherance of the common purpose are deemed to be the acts of all, and all are responsible for such acts.

Accordingly, if you find, in accordance with these instructions, that the alleged conspiracy existed and that some or all of the defendants or alleged co-conspirators were participants in it, then acts done and and statements and declarations made in furtherance of the conspiracy by the persons found by you to have been members of the conspiracy may be considered against any defendant whom you find was a member, even though such acts or declarations were made in the absence and without the knowledge of such defendant.

It is important to note that this principle applies only to the acts and declarations done or made during the continuance of the conspiracy and in furtherance thereof, that is to carry out an unlawful objective or

purpose of the conspiracy. It does not apply to acts or declarations which do not have these characteristics.

Thus, if you find that a conspiracy existed and that a particular defendant participated in it along with others, then you may consider the acts performed and statements made by others to carry out the conspiracy as evidence against that defendant even though he may not have been present.

The indictment charges, and the Government contends, that the evidence presented at the trial shows the existence of a single, integrated scheme to defraud brokers, bankers and individual investors in connection with sales and purchases of the stock of Stern-Haskell, Inc.

If you find that the scheme encompassed a variety of purposes and that a number of successive steps or stages were required in an effort to attain a central aim or purpose and that there was a nucleus of persons with a common objective, this would be a single, overall conspiracy. This is so even though you find that the scheme encompassed different subordinates and a division of labor among them infulfilling the objectives of the central scheme and even though each of the members of the conspiracy was not aware of all of the purposes of the con-

spiracy.

Although it is necessary that you find that a single, overall conspiracy existed, it is not necessary that you find that all of the defendants were members of such a conspiracy in order to convict those defendants whom you find were members. If you find that one or more of the defendants was a member of a single conspiracy and other defendants were not, you may find those defendants who were members guilty of the conspiracy charge. You must find a defendant who was not a member of a single conspiracy not guilty of the conspiracy charge.

If you find that the Government has failed to prove to your satisfaction, beyond a reasonable doubt, any one of these four essential elements of the crime of conspiracy, which I have just enumerated and discussed in detail, as to a particular defendant who you are then considering, then you must find that defendant not guilty on Count 1.

If, on the other hand, you find that the Government has proved to your satisfaction, beyond a reasonable doubt, each of these four elements of the crime of conspiracy, as to the particular defendant you are then considering, then you may convict that particular defendant.

This instruction applies to each of the elements

rm 1 mds

2 of the substantive crim-s which follow and which I shall
3 now discuss.

rm 4 Now we turn to what we call the substantive
5 counts in the indictment, but, before I explain the law
6 as to these counts, I want to explain to you that as to
7 each of these counts in which a defendant is named, he may
8 be found guilty either because he actually committed the
9 crime or because he aided and abetted its commission or
10 because he caused the commission of the crime by another.
11 In other words, it is not necessary for the
12 Government to show that the defendant physically committed
13 the crime himself, and this is true because there is another
14 federal statute involved here, and that is Section 2 of
15 Title 18, of the United States Code, which provides as
16 follows:
17 "Whoever commits an offense against
18 the United States or aids, abets, counsels, commands,
19 induces, or procures its commission, is punishable
20 as a principal.
21 "Whoever wilfully causes an act to be done
22 which if directly performed by him or another would
23 be an offense against the United States is punishable
24 as a principal."
25 No defendant can be convicted of a substantive

count unless he is specifically named as a defendant in that count in the indictment.

Accordingly, you may find a defendant guilty of a substantive crime charged if you find beyond a reasonable doubt that another person actually committed the offense and the defendant named in that count aided and abetted him or the defendant caused the crime to be committed by an innocent agent.

There is no particular rule as to what acts of a defendant would make him an aider and an abetter. It is enough, however, if you find that a defendant knowingly associated himself in some manner with the illegal venture, actually, participated in it as something he wished to bring about, or that he sought by his actions to make it succeed.

In this connection you may consider whether the defendant had a stake in the venture. In other words, the law is that one who aids and abets another or causes another to commit an offense, with knowledge of the unlawful nature of the offense, is just as guilty of that offense as if he committed the offense himself.

To find a defendant guilty of aiding and abetting you must, of course, find something more than mere knowledge on his part that a crime has been committed.

Thus, a mere spectator at a crime is not a participant.

Consequently, in order to find a defendant guilty of aiding and abetting, you must find that the particular defendant you are then considering, with knowledge of the unlawful purpose, in some way associated himself with the illegal activity; that he knowingly participated in it as something he wished to bring about and that he knowingly, by his actions, endeavored to make it succeed.

There is an alternative basis upon which you may find the defendants named in the substantive counts guilty on each of the counts in which they are named even if y ou are not satisfied that as to a particular defendant each of the elements I will describe has been proved beyond a reasonable doubt.

This alternative basis is as follows: If you find beyond a reasonable doubt that the substantive offenses alleged in these counts were committed by one or more members of the alleged conspiracy, that the particular defendant you are considering was then a member of that conspiracy, and that the acts which constituted those offenses were done in furtherance of a portion of that conspiracy of which that defendant was a member, and that defendant might reasonably have foreseen that those acts would be done, then you may find that the defendant is

guilty of the offenses alleged in the substantive counts in which he is named even though he did not otherwise personally participate in the acts constituting those offenses or did not have knowledge of them.

This alternative theory is the only theory you are to consider in determining whether the defendant Haskell is guilty of any of the substantive crimes in which he is named.

The counts of the indictment charge that the acts involved occurred on or about certain dates. It does not matter if a specific transaction is alleged to have occurred on or about a certain date and the testimony indicates that, in fact, if you find that it did occur, it was on another date.

The law only requires a substantial similarity between the dates alleged in the indictment and the date established by the testimony.

Counts Two Through Six.

The Grand Jury further charges:

"1. On or about the dates hereinafter set forth in Counts Two through Six, in the Southern District of New York, Norman Rubinson, Sidney Stein, Albert Feiffer, William Chester, Jerome Haskell, Lawrence Levine, Philip Kaye, Walter Wax, and

Michael Gardner, the defendants, unlawfully, wilfully and knowingly, in the offer and sale of securities, to wit, common stock of Stern-Haskell, Inc., by the use of means and instruments of transportation and communications in interstate commerce and by the use of the mails, (a) did employ devices, schemes and artifices to defraud; (b) did obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading; and, (c) did engage in transactions, practices and courses of business which would operate and did operate as a fraud and deceit upon purchasers of said securities and other persons whom the defendants and co-conspirators directly and indirectly, attempted to induce to purchase said securities.

"2. The allegations contained in paragraph 7 of Count One of this Indictment are repeated and realleged as though fully set forth herein as constituting and describing some of the means by which said defendants committed the offenses charged in Counts Two through Six.

"3. On or about the dates hereafter set forth,

in Counts Two through Six, among others, in the Southern District of New York and elsewhere, Norman Rubinson, Sidney Stein, Albert Feiffer, William Chester, Jerome Haskell, Lawrence Levine, Philip Kaye, Walter Wax and Michael Gardner, the defendants, unlawfully, wilfully, and knowingly did use, and cause to be used, the mails pursuant to and in furtherance of the scheme alleged in paragraph one of these counts, by causing to be sent through the mails, to the addressees set forth below, the matter set forth below:

"COUNT	DATE	ADDRESSEE	MATTER
"2	June 6, 1969	Allan Feiffer 360 East 72 St. New York, N.Y.	Confirmations of sale of 4000 shares of the common stock of Stern-Haskell, Inc.
"3	June 6, 1969	Albert Feiffer 360 East 72 St. New York, N.Y.	Confirmations of sale of 2000 shares of the common stock of Stern-Haskell, Inc.
"4	June 12, 1969	Allan Feiffer 360 East 72 St. New York, N.Y.	Confirmation of sale of 2000 shares of the common stock of Stern-Haskell, Inc.
"5	June 12, 1969	Albert Feiffer 360 East 72 St. New York, N.Y.	Confirmation of sale of 2000 shares of the common stock of Stern-Haskell, Inc.

"6	June 13, 1969	Allan Feiffer 360 East 72 St. New York, N.Y.	Confirmation of sale of 2000 shares of the common stock of Stern-Haskell, Inc.

"(Title 15, United States Code, Sections 77q and 77x and Title 18, United States Code, Section 2)."

The first count charges that it was part of the conspiracy alleged in that count to violate Section 77q(a) of the Federal Secutities Laws which is the antifraud provision of the 1933 Act. In addition, Counts Two through Six charge that defendants Rubinson, Feiffer, Chester, Haskell, Levine, Wax and Gardner committed violations of that section.

The substance of that section is that it is unlawful, inthe offer or sale of a security, to employ the mails or other means of interstate commerce or interstate communication, in furtherance of any fraudulent or deceitful scheme, practice or course of business, or in any attempt to obtain money through material misrepresentations or through omissions of a material fact which would be necessary to make the information given not misleading in connection with the offer or sale of any security.

In other to find a defendant who is now on trial before you, and who is named in these counts, guilty of a violation of Section 77q(a) you must find that the

Government has proved beyond a reasonable doubt each of the following three elements which constitute a violation of this statute.

First, that a defendant in connection with the offer or sale of a security engaged in a scheme or artifice to defraud or to obtain money and property by means of untrue statements of material facts, or omissions to state material facts necessary in order to make his statements not misleading.

Second, that the defendant did so wilfully and knowingly.

Third, that the defendant used or caused to be used the mails in furtherance of the scheme.

First Element: Scheme or Artifice to Defraud:

The first element of the offense requires that there be in existence a scheme or artifice to defraud. The language describing this first element is almost self-explanatory. A scheme or artifice is merely a plan for the accomplishment of some objective. Fraud is a generic term which embraces all the multifarious means which human ingenuity can devise and which are resorted to by one individual or a group of individuals to gain an advantage over another or others by false representations, suggestion or by suppression of the truth.

Thus, a scheme to defraud is merely a plan to obtain some advantag or value by trick or deceit. A scheme or artifice to defraud is, as I have said, merely a plan. It is a plan to defraud, a plan to accomplish an unlawful purpose.

To defraud means to deceive somebody or deprive him of his rights by deceit. A scheme to defraud is a plan to do these things.

In this case, it is the Government's contention that defendants were engaged in a plan whereby the price of Stern-Haskell stock was artificially raised and maintained through use of secret cash payments to defendants Levine, Wax and Kaye which caused them to induce investors who were unaware of such payments to buy Stern-Haskell stock.

The Government also contends that defendants used other devices to rig the price of Stern-Haskell stock, such as secret stock payoffs, placing stock in the controlled account of B'Noth Jerusalem to keep it off the market where it would depress the price, and arrangements to hold brokers harmless in thier trading of Stern-Haskell stock, thereby creating a misleading public impression that many brokers were interested in the stock.

The Government further contends that defendants used the absenced of any public prospectus concerning Stern-

Haskell stock to take advantage of the investing public, that is, they failed to disclose information which the law requires be contained in a prospectus which must accompany the sale of stock.

If you find that the Government has proved beyond a reasonable doubt that these alleged facts, or any of them, occurred during 1969 when Stern-Haskell stock was traded, you mau find that the first element has been established, that is, a scheme or artifice to defraud existed within the meaning of the statute.

Defendants, on the other hand, claim that they had no part in a plan or design to manipulate or rig Stern-Haskell stock; that they were unaware of any scheme to defraud investors; and that their actions were taken in good faith without any intent to defraud anyone. If you believe this to be true of any defendant, you must acquit that defendant.

In other words, unless you find beyond a reasonable doubt that defendants' interpretation of the facts is not correct and that a defendant did act as the Government claims with specific intent to defraud, then you must acquit that defendant.

Lies are one form of fraud but direct lying is not the only form of deceit with intent to mislead which

can be fraudulent. A fraudulent scheme may exist although no misrepresentation of fact is made. If there is an intent to deceive, fraudulent representations may be effected by deceitful statements or half-truths or the concealment of material facts, and the devising of a scheme for obtaining money by such statements or concealments is within the statute.

Omissions to State Material Facts --Cash Payments and other Secret Compensation:

The Government charges that as part of the scheme to defraud there were several omissions of material facts made to purchasers or prospective purchasers of the stock of Stern-Haskell.

One omission charged is the failure of defendants Lawrence LeVine and Walter Wax to disclose an arrangement to pay them secret payments of cash or stock for causing customers to buy Stern-Haskell stock.

This omission has two aspects -- payment of money and its concealment.

I specifically charge you that if you find that payments of money or stock were made or offered to be made to defendants Levine or Wax for selling or promoting Stern-Haskell stock and that the facts relating to these payments were concealed from the customers or were not disclosed to

those customers, you may find that the defendants' failure to disclose those payments or offers of payments to their customers constituted a misstatement and omission to state a necessary material fact in connection with the sale of Stern-Haskell stock.

When a person gives advice to buy a stock under circumstances that lead the listener to believe that the advice is disinterested and suppresses the fact that for giving such advice he is in reality being paid by one eager to sell the stock, the purchaser acting on that advice is imposed upon and deceived. Under such circumstances you may find an omission to state a material fact necessary in order to make the statements made not misleading in the light of the circumstances under which they were made.

It is of no consequence that purchasers may have obtained full value for their money. It is not an element of the crime that the victim must have suffered a pecuniary loss.

The Government also contends that other manipulative or deceptive devices or artifices were engaged in which operated as a fraud upon the purchasers of Stern-Haskell stock.

The Government's contention concerning conceal-

ment of manipulation is essentially the same as its contention concerning concealment of cash payments.

It is not important whether or not the particular market practices which were concealed were legal. The crucial question here is not the illegality of the practices but the agreement to conceal them from the customer. The manipulator's design is to create the appearance that a free market is withholding supply and creating demand for stock where the supply of stock is being suppressed, or demand for stock is being created, artificially. In determining whether or not a defendant used or employed a manipulative device to inflate the price of the common stock of Stern-Haskell, Inc. the Government must show that certain acts, attributed to the defendant, had a direct effect on causing an artificial increase in the market price of, or the demand forl common stock of Stern-Haskell, Inc.

If you find that the prices of Stern-Haskell stock were manipulated and that there was a failure to disclose such alleged manipulation to retail or wholesale purchasers of the stock, you may find that this failure to disclose was a misrepresentation of a material fact, that is, the true price of the stock.

When a broker-dealer or security salesman chooses to speak about a stock, there is a special obligation

on his part to state all the facts which are necessary to a proper understanding of that particular security or stock which is being discussed.

A broker-dealer or salesman in the securities business, as a consequence of being in a position to advise people with respect to investments and financial matters, and as a consequence of holding himself out as knowledgeable in those areas, is under a special duty to fully and truthfully disclose all the pertinent facts of which he is aware, to scrutinize the purported facts made available to him for trustworthiness and completeness, and in general, not to take advantage of a customer's ignorance of market conditions or of securities.

It is not necessary for the Government to establish that any one relied on, or suffered damage as a consequence of, the alleged scheme or artifice to defraud or any false statements or omissions of material facts. It is enough that false statements or statements omitting material facts were made in the expectation that they would be relied upon.

In considering whether or not a defendant acted in good faith, you are instructed that a belief by a defendant, if such a belief existed, that ultimately everything would work out so that no one would lose any money

does not require a finding by you that he acted in good faith. No amount of honest belief on the part of a defendant that his venture will succeed in such a way that no one suffers any loss will excuse fraudulent actions by him or false representations by him which may subject others to the possibility of such losses.

The second element which you must find has been proved beyond a reasonable doubt is that a defendant violated Section 77q(a) wilfully and knowingly. I have previously defined these terms for you.

Third Element: Use of the Mails:

The third element of this offense is that the defendant used, or caused the use of, the mails. Here the Government contends that the defendants' activities caused others to mail the confirmations, as alleged, and that these defendants could reasonably have foreseen that such confirmations for purchases and sales of Stern-Haskell stock would be mailed as a result of their activities.

Counts Seven and Eight:

"The Grand Jury further charges:

"1. On or about the dates hereinafter set forth in Counts Seven and Eight, in the Southern District of New York, the defendants Norman Rubinson, Sidney Stein, Albert Feiffer, William Chester, Jerome

Haskell, Lawrence Levine, Walter Wax, Philip Kaye, and Michael Gardner, unlawfully, wilfully and knowingly did, directly and indirectlyk by use of means and instrumentalities of interstate commerce and the mails, use and employ in connection with the purchase and sale of securities, to wit, common stock of Stern-Haskell, Inc., manipulative, and deceptive devices and contrivances in contravention of Rule 10b-5 (17 CFR Section 240.10b-5) of the rules and regulations of the United States Securities and Exchange Commission.

"2. The allegations contained in Paragraph 7 of Count One of this Indictment are repeated and realleged as though fully set forth herein, as constituting and describing some of the means by which said defendants committed the offenses charged in Counts Seven and Eight.

"3. On or about the dates hereinafter set forth in Counts Seven and Eight in the Southern District of New York, the defendants Norman Rubinson, Sidney Stein, Albert Feiffer, William Chester, Jerome Haskell, Lawrence Levine, Walter Wax, Philip Kaye, and Michael Gardner, unlawfully, wilfully, and knowingly did use and cause to be used means and

instrumentalities of interstate commerce and the mails pursuant to and in furtherance of the scheme alleged in paragraph 1 of these counts, by sending and causing to be sent to the addressees hereinafter set forth the matter hereinafter set forth:

"COUNT	DATE	ADDRESSEE	MATTER
"7	June 12, 1969	Lena Dundish 522 Ocean Avenue Brooklyn, N.Y.	Confirmation of the purchase of 200 shares of the common stock of Stern-Haskell, Inc.
'8	June 11, 1969	Paul E. Schuchalter and Mrs. Dorothy Schuchalter 30 First Street Suffern, N.Y.	Confirmation of the purchase of 200 shares of the common stock of Stern-Haskell, Inc.

"(Title 15, United States Code, Sections 78j and 78ff; and Title 18, United States Code, Section 2; and Title 17, Code of Federal Regulations, Section 240.10b-5)."

The first count of the indictment charges that one purpose of the conspiracy was to violate Section 78j(b) of the Federal Securities Law which is the antifraud provision of the 1934 Securities and Exchange Act. In addition, Counts Seven and Eight charge defendants Rubinson, Feiffer, Chester, Haskell, Levine, Wax, and Gardner with violations of this statute and of the securities and

Exchange Commission Rule 10b-5 promulgated thereunder.

This fraud provision of the 1934 Act is similar to the fraud provision of the 1933 Act. Pursuant to this 1934 provision, the SEC enacted Rule 10b-5 which I read previously along with the statute pursuant to which it was passed. Since this antifraud provision is similar to the 1933 provision which I have just discussed and explained in connection with Counts 2 to 6 it is not necessary for me to discuss again the meaning of certain terms such as fraud, scheme or artifice to defraud, which are used in this statute and rule.

Defendants Rubinson, Feiffer, Chester, Haskell, Levine, Wax and Gardner and other persons not presently on trial are charged with specific violations of Section 78j(b), a securities fraud law, and Rule 10b-5 in Counts Seven and Eight of the indictment.

In order to find a defendant guilty on any of these counts you must find that the Government has proved the following elements beyond a reasonable doubt:

First: that such a defendandant in connection with the purchase or sale of Stern-Haskell stock did any of the following or did aid and abet another to do any of the following:

a) employ any device, scheme or artifice to

defraud, or

b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

c) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any persons.

Second: that such defendant did so knowingly and wilfully;

Third: that such defendant used or aided, abetted or caused the use ofthe mails as alleged.

"The same schemes to defraud which the Government claims existed as to Counts 2 to 6, it also claims existed as to these Counts 7 and 8 and therefore it is unnecessary to repeat here those claims of the Government which I have just stated with respect to Counts 2 to 6.

The Government's claim with respect to the use of the mails here is also the same as their claims with respect to the use ofthe mails as to Counts 2 to 6.

Counts Nine Through Thirteen:

"The Grand jury further charges:

"1. On or about the dates hereinafter set forth in Counts Nine through Thirteen in the Southern

District of New York, defendants Norman Rubinson, Sidney Stein, Albert Feiffer, William Chester, Jerome Haskell, Lawrence Levine, Walter Wax, Philip Kaye and Michael Gardner unlawfully, wilfully and knowingly did devise and intend to devise a scheme to defraud purchasers of the common stock of Stern-Haskell, Inc., and to obtain money and property from said persons by means of false and fraudulent pretenses, representations and promises and for the purpose of executing said scheme and artifice to defraud and attempting so to do, did cause to be placed in post offices and authorized depositories for mail matter and did cause to be delivered by mail, according to the directions thereon, certain matter to be sent and delivered by the United States Postal Service, as more particularly set forth below.

"2. The allegations contained in Paragraph 7 of Count One of this Indictment are repeated and realleged as though fully set forth herein as constituting and describing some of the means by which said defendants committed the offenses charged in Counts Nine through Thirteen herein.

"3. On or about the dates hereinafter set forth, in Counts Nine through Thirteen, in the

Southern District of New York, said defendants unlawfully, wilfully and knowingly did cause to be placed in post offices and authorized depositories for mail, and did cause to be delivered by mail by the United States Post Service, according to the directions thereon, to the addressees hereinafter set forth, the matter hereinafter set forth:

"COUNT	DATE	ADDRESSEE	MATTER
"9	June 16, 1969	Prudential 1313 N.E. 125th St. Miami, Florida	Confirmation of the purchase of 150 shares of the common stock of Stern-Haskell, Inc.
"10	July 9, 1969	Prudential 1313 N.E. 125th St. Miami, Florida	Confirmation of the purchase of 425 shares of the common stock of Stern-Haskell, Inc.
"11	August 21, 1969	Lena Dundish 522 Ocean Avenue Brooklyn, N.Y.	Confirmation of the purchase of 200 shares of the common stock of Stern-Haskell, Inc.
"12	August 22, 1969	Myron Altschuler 12 Roosevelt Terrace Bayonne, New Jersey	Confirmation of the purchase of 2000 shares of the common stock of Stern-Haskell, Inc.

"13 August 25, 1969 B'Noth Jerusalem 157 Hewes Street Brooklyn, N.Y. Confirmation of the sale of 5000 shares of the common stock of Stern-Haskell, Inc.

"(Title 18, United States Code, Sections 1341 and 2.)"

Count One also charges that the defendants conspired to violate 18 U.S.C. Section 1341, the mail fraud statute. In addition, Counts Nine through Thirteen charge defendants Rubinson, Feiffer, Chester, Haskell, Levine, Wax and Gardner with substantive violations of that section.

In order to convict a defendant of the offense charged In any of these counts, the Government must prove beyond a reasonable doubt the following three elements with respect to that count.

1. That the defendant devised or intended to devise a scheme or artifice to defraud or to obtain money by false or fraudulent pretenses, representations or promises or that the defendant aided and abetted such a scheme.

2. That the defendant did so wilfully and knowingly, and,

3. That the defendant used or caused the use

of the mails as alleged in furtherance of the scheme.

Now I shall discuss in more detail each one of these three elements:

The first element of the offense is existence of a scheme or artifice to defraud or to obtain money by false or fraudulent pretenses, representations or promises. I have already explained the term fraud to you in connection with Counts 2 to 6. The same scheme to defraud which the Government claims existed with respect to those counts is also claimed by the Government to have existed with respect to these counts.

I shall, therefore, not repeat the Government's claims here.

I have already explained the second element.

The third element of the mail fraud count is that the defendant used the mails or caused the mails to be used in furtherance of a scheme to defraud. If you find that the defendant so caused the mails to be used, then it is irrelevant whether the defendant was the one who actually mailed the letter.

If you find that the scheme entered into by the defendant reasonably contemplated the utilization of a com mercial practice which taken in its entirety embraced

the use of the mails, such as mailing confirmation slips back and forth on the purchase of securities, then you may find such mailings to have been caused by the defendant.

Further, because the crime is the scheme and not the result of the scheme, I instruct you that in order to convict, it is not necessary for you to find that the defendant, in fact, realized any gain whatsoever from the scheme nor is it necessary that any intended victim suffer any loss whatsoever.

The question is, did the defendant knowingly devise a scheme to defraud and to obtain money and property and did he use the mails to further the scheme.

In order for a scheme to come within the terms of the mail fraud statute, it is not necessary that anyone be deceived. The offense is committed when the scheme has been devised and, in furtherance of it, the mails have been used with intent to defraud.

Here the Government need not show that anyone actually relied on the alleged misrepresentations contemplated by the scheme. If such misrepresentations were made as a part of a deliberate scheme to defraud intending others to rely upon them and if the defendants set in motion steps which would normally be expected to lead to the use

of the mails and the mails were in fact used, that would be sufficient.

If you find that the Government has failed to establish any one of these three elements which I have just enumerated and discussed for you beyond a reasonable doubt as to a particular defendant, whom you are then considering, you must acquit that defendant as to that charge of mail fraud.

If on the other hand, you find that the Government has established each and every one of these three elements beyond a reasonable doubt as to the particular defendant you are then considering as to a particular count, you may find that defendant guilty.

Count Fourteen:

"The Grand Jury further charges:

"On or about June 6, 1969, in the Southern District of New York and elsewhere, defendants Norman Rubinson, Sidney Stein, Albert Feiffer, William Chester and Edgar Reynolds unlawfully, wilfully and knowingly, directly and indirectly, caused to be carried by means and instruments of transportation in interstate commerce from in or about Miami, Florida, to in or about Brooklyn, New York, for the purpose of sale and delivery after sale, securities, to wit, common stock

of Stern-Haskell, Inc., when no registration statement as to such securities was in effect with the United States Securities and Exchange Commission.

"(Title 15, United States Code, Sections 77e and 77x; Title 18, United States Code, Section 2.)"

I am going to read along with that, Counts Fifteen through Eighteen:

"The Grand Jury further charges:

"On or about the dates hereinafter set forth in Counts Fifteen through Eighteen, in the Southern District of New York, defendants Norman Rubinson, Albert Feiffer, Sidney Stein, William Chester, and Edgar Reynolds unlawfully, wilfully and knowingly, directily and indirectly, made use of the mails and caused the mails to be used to sell securities, to wit, common stock of Stern-Haskell, Inc., in that said defendants did cause the mails to be used to send to the addressees hereinafter set forth, the matter hereinafter set forth, when no registration statement as to such securities was in effect with the United States Securities and Exchange Commission:

"COUNT	DATE	ADDRESSEE	MATTER
"15	June 19, 1969	B'Noth Jerusalem 157 Hewes Street Brooklyn, New York	Confirmation of the sale of 8000 shares of the common stock of Stern-Haskell, Inc.
'16	August 22, 1969	B'Noth Jerusalem 157 Hewes Street Brooklyn, New York	Confirmation of the sale of 13,500 shares of the common stock of Stern-Haskell, Inc.
"17	August 25, 1969	Richard M. Warren and Rose M.Warren 2 Watson Avenue North Haven, Conn.	Confirmation of the purchase of 200 shares of the common stock of Stern-Haskell, Inc.
"18	August 28, 1969	Sylvia Lynn Malek and Rochelle B. Malek, 1753 Michigan Avenue Miami Beach, Florida	Confirmation of the purchase of 300 shares of the common stock of Stern-Haskell, Inc.

"(Title 15, United States Code, Section 77e and Title 18, United States Code, Section 2)."

One of the unlawful objectives of the conspiracy charged in Count One is the use ofinterstate commerce and the mails to sell unregistered securities in violation of Section 5 of the Securities Act of 1933 which I read to you. This statute is also the basis for Counts Fourteen through Eighteen of the indictment which

charge defendants Rubinson, Feiffer, Chester and Reynolds with selling and aiding and abetting the sale of unregistered securities. Again, that section prohibits the use of any interstate facility or of the mails to sell unregistered securities or to transport unregistered securities for the purpose of sale or delivery after sale.

Section 2 of Title 18, the aiding and abetting statute to which I have previously referred, is also cited in these counts. The Government contents that some defendants aided and abetted other defendants and co-conspirators in the illegal sale of unregistered stock.

Section 5 of the 1933 Act refers to "any security." You are instructed that the common stock of Stern-Haskell, Inc. is a "security" within the meaning of the Act.

The elements of the crime charged in Counts Fourteen through Eighteen which the Government must prove beyond a reasonable doubt are:

(1)(a) As to Count Fourteen, that the defendant carried Stern-Haskell stock or caused it to be carried in interstate commerce for the purpose or sale or delivery after sale;

(b) As to Counts Fifteen through Eighteen, that the defendant directly or indirectly, caused

the mail to be used to sell Stern-Haskell stock;

(2) that the stock was not registered with the the Securities and Exchange Commission, as required by the Securities Act of 1933;

(3) that the stock sold was required to be registered under the law with the Securities and Exchange Commission, that is, that the transactions involving the stock were not exempt from the relevant provisions of the Securities Act of 1933; and

(4) that the defendant knew the stock was not registered and was required to be registered, and acted wilfully and knowingly.

These are the four elements you must find in order to convict the defendants under any of the unregistered securities counts.

However, you should recall what I told you about aiding and abetting -- namely, that to convict a defendant of these counts, it is not necessary that you find that he personally did all the acts described in these four elements. It would be sufficient if you find, beyond a reasonable doubt as the Government contends, that he aided, abetted, counseled, procured or induced or caused another defendant to perform the acts described in these four elements.

First Element: Use of Instruments of Interstate Commerce and of the Mails:

The first element of the offense is what we call the jurisdictional element. Congress has provided in the Securities Act that the sale of unregistered stock is a federal offense if the defendant in any way, directly or indirectly, used the mails or caused someone else to do so in connection with such a sale, or if the defendant carried unregistered stock in interstate commerce or caused someone else to do so for the purpose of sale or delivery after sale.

In this case, for example, in Count Fourteen, the Government contends that defendants Reynolds and Chester transported unregistered Stern-Haskell stock from Florida to New York for the purpose of sale or delivery after sale. In Counts Fifteen through Eighteen the Government also contends that the defendants sold, and aided and abetted the sale of, unregistered stock and that in connection with such sales defendants had dealings which in the normal course of business resulted in the use of the mails. Each of these counts charges these defendants with directly or indirectly causing the mailing of a confirmation for a specified number of shares of Stern-Haskell stock.

In order to satisfy this first element of th e crime charged in Count Fourteen you must find that a defendant transported Stern-Haskell stock in interstate commerce for the purpose of sale or delivery after sale.

As to Counts Fifteen through Eighteen, any mailing made for the purpose of effecting a sale is sufficient to satisfy this first element. It is not required that the items sent through the mail be the stock certificates representing the shares sold. The items sent can be confirmations of such a sale.

It is for you to decide, upon the evidence which you recall and the reasonable inferences which that evidence will support, whether the Government has proved beyond a reasonable doubt that a defendant by his personal act or actions in some way directly or indirectly caused the use of the mails as charged in these counts.

However, it is not necessary that a defendant himself mail the confirmations of sale. The entire transaction can be between third parties. Thus, a defendant may be found to have caused a confirmation to be mailed even though such mode of transmission was not contemplated nor intended provided that such mode of transmission might have been reasonably foreseen.

The Government contends with respect to each

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of the Counts Fifteen through Eighteen that on or about the date indicated in each count a confirmation of a sale or purchase of Stern-Haskell stock was mailed, and that the defendants, when they sold Stern-Haskell stock, would have reasonably forseen that the buyers would sell the stock and that the brokers would mail confirmations to subsequent buyers and sellers.

Second Element, Failure to Register the Stock:

With respect to the second of the elements that I have outlined, the Government has introduced a certified statement from the Securities and Exchange Commission that no registration statement was ever filed at the Commission with respect to common stock of Stern-Haskell. This statement has not been contradicted and there appears to be no controversy about the fact that the Stern-Haskell stock referred to in the evidence was not registered.

As I have previously explained to you, a registration statement is a written statement, required by the statute to be filed with the Securities and Exchange Commission, revealing the fact that the sale of stock was contemplated and must contain full and fair disclosure of all relevant material facts to an evaluation of the worth of that security.

A security is "registered" by the prospective

seller when the seller has filed with the Securities and Exchange Commission the required written statement. Such registration statement is deemed 'effective," that is, appropriate for the use in the sale of the security when the Securities and Exchange Commission declares it effective.

An "unregistered security" is one as to which no registration statement has been filed with the Securities and Exchange Commission.

The third basic element, that is, the question whether the stock was required to be registered revolves most importantly about the question of whether or not these were exempt transaction. You undoubtedly observed when I read Section 5 that it is a very broad and all-encompassing prohibition against the use of the mail to sell any unregistered securities whatsoever. That broad prohibition of Section 5 must be read in conjunction with certain exemptions contained in the Securities Act, which provides that in certain instances and only in those instances a sale of stock will be exempt from the requirement of registration.

For the purpose of this case you may consider as within the registration requirements of the Securities Act all transactions made through an issuer and involving a

public offering and all transactions made through an underwriter as I shall now define those terms for you. For the purpose of this case you cannot find that a particular sale of unregistered Stern-Haskell stock caused by the defendants was illegal unless that sale was made through an issuer involving a public offering or through an underwriter.

The statute defines the term issuer to mean every person who issues or proposes to issue any security.

Title 15, U.S.C., Section 77B(4).

In addition, the statute includes as an issuer any person directly or indirectly controlling or controlled by the issuer.

Title 15, U.S.C. Section 77b(11).

Thus, any public distribution of Stern-Haskell shares, involving either an issuer or a control person would not be exempt from the registration requirements of the securities laws.

What is meant by "Control Person"? How do you decide who is a controlling person? The resolution of these questions depend upon the facts of each case, and focuses not on any technical factors, but on the person's power to direct the management, policies and decisions of the corporation whose stock is being issued. Clearly it

includes officers, and directors of the issuing corporation. But a person does not have to be formally connected with the issuing corporation in order to be a control person. Nor is it necessary that a person own a specific amount of shares in order to be a control person.

A controlling person in the context of this statute, is someone, who, by one means or another, such as stock ownership, executive office, relationship with executive officers, could cause the corporation to file or not to file a registration statement with respect to a proposed distribution of securities.

The power to control, even if unexercised, may make a person a controlling person. Thus either the power to control or the actual exercise of control is sufficient to make a person a controlling person.

In addition, a group of people may be controlling persons, if they are acting in concert and their power in the aggregate is sufficient to cause a registration statement to be filed.

When control rests in a group, each member of the group is a control person, regardless of the size of his personal stock holdings and regardless of his individual power to control the issuance of a registration statement.

When stock is held by a controlling person, a public sale of any portion of the stock he holds is subject to registration. Likewise, when stock is held by a member of a controlling group, a public sale by any one of them, acting in concert with the others, of a portion of the shares held in a sale by a controlling person and is not exempt from registration.

As I have said, the government's claim in this case is that the defendants charged in the unregistered stock counts purchased stock from the issuer, Stern-Haskell, with a view toward distribution and, by virtue of that purchase, were underwriters with respect to that transaction and any subsequent transactions.

In addition, the Government also claims that the defendants Chester, Rubinson, Feiffer, Reynolds and Stein were controlling persons with respect to the 150,000 shares of Stern-Haskell held by them, directly and indirectly, through persons who received large blocks of Stern-Haskell stock on their behalf when the liquidating dividend was distributed to National Ventures shareholders.

Thus, even if you find that the initial purchase from Stern-Haskell and the liquidating dividend to the individual shareholders of National Ventures was not with

a view toward public distribution, the Government contends that any subsequent transaction with respect to the 150,000 shares held directly or indirectly by any one of the alleged controlling group with a view to public distribution was a transaction involving a control person and should have been registered under the securities laws.

It is, of course, for you and you alone to determine whether or not a given transaction in Stern-Haskell was with a view toward public distribution, and whether or not a particular defendant was an underwriter, a control person or neither, with respect to each tranasaction.

For our purposes an underwriter is either someone who purchases Stern-Haskell stock from the company Stern-Haskell itself or from a person in direct or indirect control of Stern-Haskell with a view to distributing that stock or someone who directly or indirectly participates in any such underwriting.

In other words, an underwriting is a middleman acting for a company or a controlling person of a company in the sale to the public of large quantities of stock in the company.

It matters not what a person's profession is or whether he describes himself as an "underwriter." If he acts for an issuer of stock, or a controlling person,

in the ways I have described, or directly or indirectly participates in any such undertaking, he is, for purposes of Section 5, an underwriter.

The Government contends that the defendants Rubinson, Feiffer, Chester and Reynolds, along with defendant Stein who is not on trial, were underwriters of Stern-Haskell.

The Government contends that these defendants were underwriters because, through National Ventures, they purchased stock of Stern-Haskell with a view to distributing that stock to the public.

A "distribution" is an offering to the public of stock, that is, a sale by the company itself or by a "control person," or by those associated with him, of a large amount of stock in a company, that is, an amount which is substantial in relation to the total amount of s7ares outsganding.

Only transactions involving a sale of stock are subject to the registration requirements of the Securities Act of 1933. If you find that defendants' activities in connection with Stern-Haskell stock did not involve a sale, then they were exempt from registration.

In determining whether or not the Stern-Haskell stock here in issue was required to be registered,

you should consider the overall purpose of the Securities Act of 1933 which is to provide adequate disclosure to members of the investing public and to prevent circumvention of the registration requirements by devious means.

Accordingly, you are not required to consider each stage of the transactions here in issue, the transfer of stock from Stern-Haskell to National Ventures, National Ventures declaration of a stock dividend and the subsequent creation of a public market in the Stern-Haskell stock, as isolated events. You may, instead, view them as a whole, as parts of an integrated chain of events. If by so doing, you determine that the entire transaction involved a sale of Stern-Haskell stock to the public, then you may find that it was not exempt from registration under the "no sale" theory. In arriving at this determination you may consider what the defendants' purposes were in the transaction as you find it, and whether you find that the defendants had any business purpose in the transaction here, other than the sale of Stern-Haskell stock to the public.

"The Grand Jury further charges:

"1. On or about the dates hereinafter set forth in Counts Nineteen and Twenty, in the Southern District of New York, defendants Norman Rubinson,

William Chester and Michael Gardner unlawfully, wilfully and knowingly did devise and intend to devise a scheme to defraud recipients of the common stock of Stern-Haskell, Inc., and to obtain money and property from said persons by means of false and fraudulent pretenses, representations and promises, and for the purpose of executing said scheme and artifice to defraud and attempting so to do, di transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce signs, signals and sounds, as more particularly set forth below.

"2. The allegations contained in Paragraph 7 of Count One of this Indictment are repeated and realleged as though fully set forth herein as constituting and describing some of the means by which said defendants committed the offenses charged in Counts Nineteen and Twenty.

"3. On or about the dates hereinafter set forth in Counts Nineteen and Twenty in the Southern District of New York, said defendants unlawfully, wilfully and knowingly did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce signs, signals and sounds

between the parties hereinafter set forth.

A further unlawful objective of the conspiracy charged in Count One is fraud by wire in violation of Title 18, United States Code, Section 1343. In addition Count Nineteen charges defendants Rubinson, Chester, and Gardner with substantive violations of that section. Count 20 charges Gardner with an additional substantive violation.

This statute makes it unlawful for any person to devise a scheme or artifice to defraud or for obtaining money or property by means of false or fraudulent representations and then to use or cause to be used the telephone in interstate or foreign commerce to effectuate the fraud or misrepresentation.

With respect to Count 19, this statute is violated if the following three elements are established beyond a reasonable doubt as to defendant Gardner.

1. That the defendant Gardner devised or intended to devise a scheme or artifice to defraud or to obtain money or property by false and fraudulent pretenses, representations or promises or that he aided or abetted such a scheme.

2. That the defendant Gardner did so wilfully and knowingly.

3. That defendant Gardner transmitted or caused the transmission by another of writings, signs, sounds or signals by wire communication in interstate commerce, as alleged, from the Southern District of New York in furtherance of the scheme.

Before you can find defendant Gardner guilty of Count 19, you must be convinced beyond a reasonable doubt that as to him the Government has established each of these three elements.

Interstate and foreign telephone conversations constitute use of wire communication in interstate and foreign commerce within the statute.

I have already defined for you what is meant by a scheme or artifice to defraud or to obtain money or property by false or fraudulent pretenses. In connection with these two charges the Government relies on the same scheme to defraud and to obtain money or property by false pretenses which I have previously described to you with respect to the other counts.

The Government claims that defendants Rubinson, Chester and Gardner devised a scheme by which defendant Gardner would obtain at a small price unregistered, non-transferable Stern-Haskell stock which Gardner would then pledge as collateral for a bank loan while representing

to the bank that the stock was registered with the SEC and was fully tradeable in the event of a default on the loan. The Government contends that defendants Rubinson and Chester and Gardner were all involved in a scheme to defraud and to obtain money by false representations through the use of Stern-Haskell stock and that the scheme to obtain a loan was a part of it. The Government next contends that Gardner knew at the time he pledged 50,000 shares of Stern-Haskell stock that those stocks were restricted investment stock which could not be pledged as security for a loan and could not be traded, yet he affirmatively represented the contrary to the bank throught Mr. LaLone.

It is charged in Count Nineteen that a telephone call was made on July 24, 1969 by Bernard LaLone, an attorney who was negotiating the loan for Gardner, to John Carroll, a bank officer, in Montreal, Canada, and that the defendants Rubinson, Chester, and Gardner caused this call to be made in furtherance of the scheme to defraud and to ob tain money by false representations.

Consequently, before you can find the defendants Chester and Rubinson guilty of this charge you must find, as the Government claims, beyond a reasonable doubt that they aided and abetted Michael Gardner in some way and that they knew of his plan to defraud recipients of the stock

or to secure money through an improper use of the stock. It is not necessary for the Government to prove that they knew precisely how Michael Gardner intended to use the stock. It is only necessary to prove that they knew that Gardner would use the stock to defraud or to obtain money.

In order to convict Michael Gardner of this charge you must find that he caused the telephone call to be made by Lalone in furtherance of the scheme to defraud and to obtain money by false representations and that he knew at the time he pledged the stock for collateral that it could not be used as collateral for the loan.

Only Michael Gardner is charged in Count 20.

With respect to Count Twenty, the Government's claim is that on December 30, 1969, the bank officer, John Carroll, made a telephone call to Michael Gardner in New York City from his office in Montreal, Canada, regarding the fact that the stock had decreased in value. It is the Government's claim that Michael Gardner again at this time misrepresented that the stock was freely tradeable. Consequently in order to convict Michael Gardner of Count Twenty you must find beyond a reasonable doubt that he caused John Carroll to make a call from his office in Montreal to Gardner's home or office in New York City, and that this resulted from the scheme to defraud or to obtain

money by false misrepresentations and that at the time Gardner made this representation on December 30, 1969, he again was aware ofthe fact and knew that the stock was not freely tradeable.

With respect to Counts Nineteen and Twenty, venue, you will note that each of Counts Ninetwen and Twenty allege that when the telephone conversations occurred the bank officer, John Carroll, was in Montreal. Count Nineteen alleges that Bernard LaLone was in New York; and Count Twenty alleges that Michael Gardner was in New York.

I instruct you that to find the defendant Gardner guilty of either of these Counts, you must find beyond a reasonable doubt that there was a telephone conversation between the parties named, on or about the date set forth, and that it was in interstate or foreign commerce, by which I mean that the transmission from caller to receiver crossed State or national boundaries.

You must also find that the call was a necessary method of communication with respect to the loan on the dates in question or that Gardner anticipated that calls would be made by telephone in connection with the loan.

Defendants Wax and Levine have introduced into evidence a Securities and Exchange Commission release of July, 1969. In connection with this release, I instruct

you that SEC releases do not have the force or effect of law. They are merely public statements of pllicy or of concern issued from time to time by the Commission.

Thus, the fact that the SEC chose to comment on certain developments in the investment community in July of 1969 bears no significance one way or the other on the question whether the transaction entered into earlier in 1969 actually broke the law.

The most important part of this case is the part which you now, as jurors, are about to play, because it is for you and you alone to decide whether a defendaant is guilty or not guilty as to each count of the indictment. I know you will try the issues that have been presented to you according to the oath which you have taken as jurors. In that oath you promised that you would well and truly try the issues joined in this case and a true verdict render.

I suggest to you that if you follow that oath, and try the issues without combining your thinking with any emotions, you will arrive at a just verdict. It must be clear to you that once you get into an emotional state and let fear or prejudice or bias or sympathy interfere with your thinking, then you will not arrive at a true and just verdict.

You will endeavor to arrive at a separate

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verdict as to each count for each defendant, provided you can do this reasonably and consistently with the conscientious convictions of each and every one of you.

The form of your verdict as to each count and as to each defendant is either guilty or not guilty.

You may find each defendant guilty as to each count with which he is charged.

You may find each defendant not guilty as to each count with which he is charged.

You may find a verdict of guilty as to any one or more of the counts charged as to any one or more of the defendants and a verdict of not guilty as to any one or more of the remaining counts charged.

The jury is not to consider or in any way to speculate about the punishment which a defendant may receive if he is found guilty. The function of a jury is to determine the guilt or innocence of a defendant on the basis of the evidence and on my instructions. It is the judge alone, the Court, who has the duty to determine the sentence if there is a conviction.

Now, as you deliberate, ladies and gentlemen, please be careful to listen to the opinions of other jurors, as well as to ask for an opportunity to express your own views. No one juror holds the center stage in the jury

room; no one juror controls or monopolizes the deliberations.

If after listening to your fellow jurors and if after stating your own view you become convinced that your view is wrong, do not hesitate because of stubbornness or pride of opinion to change your view if you become convinced that your original view may be wrong.

On the other hand, do not surrender your honest conviction solely because of the opinion of your fellow jurors or because you are outnumbered.

You are instructed that it is important to both the Government and the defendant that this case be decided as to each count. If you are unable to agree to a verdict on one or more of the counts as to one or more of the defendants, you may not compromise by agreeing to a guilty verdict on one or more of the counts and a not guilty verdict on the others.

Your verdict as to each defendant on each count must reflect the conscientious convictions of each and every one of you.

You understand, of course, that in a criminal case, your verdict as to each count as to each defendant must be a unanimous verdict.

You may send for any exhibits you may desire

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to review, or have any testimony read back to you.

You are instructed that you may not reveal the standing of the jurors, that is, the split of the vote for any verdict, to anyone, including the Court, at any time during your deliberations.

Now, in addition, ladies and gentlemen, I plan to send in, or pass to Madam Foreman, a form of verdict on which the jury verdict will be recorded.

At this time, however, we will take a recess. The jury is excused. Leave your charges right there on the seats, please.

(Jury excused.)

THE COURT: At this time the attorneys and the parties can state any exceptions to the charge for the record.

Mr. Rubinson, do you have any exceptions to the charge/

MR. RUBINSON: Well, I don't think the charges were proper as far as the exemptions were concerned. The exemptions that were listed in the charge did not fully set out the true exemptions as far as unregistered stock is concerned. There are other unregistered stocks in question, and it just said stocks had to be registered. I say it should be clarified to show that the exemptions considered are ICC exemptions not controlled by SEC, bank stock exemptions, which do not have to be registered, Reg. A exemptions, which require no certification, 257 exemptions pursuant to Reg. A which requires not even a prospectus, only a notification.

I think that charge should be given to the jury as addition to the exemptions.

THE COURT: Mr. Feiffer, through his counsel, Mr. Robson, will you state your objection for the record?

MR. ROBSON: On page 21, if your Honor please, your Honor indicated that the defendants were charged with transporting and selling stock without registration, and you have the words in there "but which they knew should have been registered before such transportation and sale."

There is no such charge in the indictment. The indictment does not contain any such language.

On the following page, 21-a, I except to your Honor's charge on the use of similar acts on the question of knowledge and intent. I believe the charge inadequately explains the manner in which those similar acts should be used by the jury, and I don't believe in this case the similar acts have any bearing on the question of intent, since there was no claim made that the acts of any of theee defendants were accidental or inadvertent.

Therefore, I feel that the charge improperly allows the jury to conjecture about those similar acts without there being any guidance as to how they are to be used.

On page 22, I except to the charge with respect

to the inability of a jury to draw any inferences from the government's failure to call certain witnesses.

There were certain witnesses whose testimony in this case was so clearly necessary, witnesses who were identified by the government as co-conspirators, that I think it is almost a joke to suggest that these defendants had any power to call these witnesses or that they could have subpoenaed these witnesses and put them on the witness stand cold, without interviewing them.

It was quite apparent what happened with one defendant when he communicated with one witness. The witness immediately communicated with the United States Attorney's office. And this is what happens when you attempt to speak with witnesses.

Another witness was attempted to be contacted by Mr. Andrews, and it came out during the trial that the witness refused to talk to Mr. Andrews.

Therefore, I think that sort of charge is improper and gives the jury the impression that there is equality of opportunity.

I also except to the Court's charge -- the other charge on that page -- the government's failure to call witnesses. All of the witnesses whose testimony was not introduced by the government and to whom reference was made

by the defendants were not witnesses whose testimony was cumulative. They are all witnesses whose testimony, in my opinion, was critical to a determination of the issues in this case. That is, Mr. Malmeth, Mr. Gluckman, Mr. Spitzer, and there was one other, Mr. Silber, and Mr. McKay.

With respect to the charge on page 25, the charge on expert witnesses, I would request that the Court add to that charge a statement that the jurors in evaluating the opinion of an expert may consider the nature of the facts which the expert considered and the extent to which the expert did any investigation of facts in determining how much weight to give to his opinion, the testimony having been that the experts only considered limited facts presented to them by the United States Attorney.

On page 27, on tapes and transcripts, the Court charged that the government claims that the testimony of the witness Saul Weitzman is corroborated by the tape recordings of telephone conversations. I don't think the government makes any such claim. I think the government claims that some aspects of Mr. Weitzman's testimony were corroborated, and I think it is misleading to the jury to charge them that the tape recordings corroborated all of his testimony.

The tape recordings have no relationship to

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anything that transpired at the February 8th meeting and many other aspects of histestimony.

On page 29, and this exception is the manner in which the charge reads, because at various points later on some of myobjections are picked up in the Court's charge, but you say, at the bottom of that page, that the provisions of the Securities Act require that before a security is offered to the public, the corporation issuing the security must file a registration statement, and I think at that point the Court ought to advise the jury that those are limited to situations where no exemptions are availa~~ble,~~ as you advised them later on.

I object to the statement on page 30, that a person who wishes to buy a new car or household appliance or house can determine from inspection the quality of the product as opposed to one buying a security, because I submit one buying a car, and I think Mr. Haskell can back me up on that, is in no better position to judge the car than someone buying a security.

I except to the Court's statement on page 31 that the disclosure required by Section 5, and the Court emphasized this point, is supported by certified, the Court said, with emphasis, balance sheets and profit and loss statements.

That may be true where the issue is in excess of $300,000, in 1969, and today it is $500,000. In issues where less than $300,000 is involved no ceritifed balance sheet is required and is always made with an uncertified balan-e sheet.

Moreoever, Mr. Rubinson mentioned the exemption available for issues of a value of less than $50,000, in which event no registration statement is required, no prospectus is required.

Mr. Wohl argued to the jury on this point and it comes up now, that the value of Stern-Haskell, the value of the stock being issued, was less than zero and there is, in my opinion, although the law is very, very unclear on this subject, no basis for claiming this issue was required to be registered, in view of that statement by Mr. Wohl, because it was clearly worth less than $50,000 at the time of its issue.

What happens to it after it trades is immaterial. The $50,000 exemption is available even if the next day on the stock market those securities are trading for a more substantial figure.

At page 33 your Honor refers again to Section 5, or 77E, Title 15, without referring to the availability of exemptions, both the $50,000, the Regulation A exemption

and the "so sale" exemtpion, or the issuer or control person or underwriter exemption.

That doesn't come until much later in the charge and if the jury were to pick up this charge or remember this, they could very well remember it separate and apart from the balance.

On page 34 your Honor again refers to a certified financial statement, again emphasizing in the minds of the jury that a certified financial statement may be used but that is not always required.

At page 54, I am not sure how quite to state this, but your Honor states the five unlawful objectives alleged in the indictment and I submit to your Honor if those are the unlawful objectives alleged in the indictment, as your Honor's charge sets forth, there is nothing to submit to the jury on this charge because neither of those five unlawful objectives are sufficiently definite to constitute a crime.

Your Honor, in her charge, points out, it seems to me very clearly, the whole point I made when I moved to dismiss the indictment, you have to find one means, that the means are not necessarily part of the conspiracy, but the conspiracy is to procure the results set forth here, one of these five objectives, and none of them are

sufficiently set forth in that charge to the jury and I submit the jury has no right to consider that charge at all, which is the point I made earlier.

I have the same problem with the charge at page 72, which is the portion of the elements of a securities fraud.

The charge states the jury is to find the defendants engaged in a scheme to drfraud or obtain money, with no further definition.

It is improper for the jury to be charged they may find the defendants guilty upon the finding of any scheme to defraud.

That error, or omission, is attempted to be clarified when the Court later on talks about the Government's contentions.

I submit I have no interest in what the Government's contents are as set forth by Mr. Wohl. We are involved here only with what the grand jury's contentions are and no such contentions appear in the indictment.

These contentions come only from the imagination and ingenuity of Mr. Wohl and I think it is immaterial or (1) to tell the jury they may find any scheme and then to tell them they may find the defendants guilty on the basis of what Mr. Wohl contents the charge is.

I particularly object further on, on the page, to the statement that the Government also contends the defendants used other guises such as, indicating that the jury may have the right to find even additional devides which are not mentioned here which neither the Court nor the defendants are aware of at this point.

They certainly have the power under this charge to convict these defendants on the basis of any device they think came out of the evidence even if we are not aware of what is going on in their minds.

I have the same objections that I have already set forth and won't to into detail, on page 75, to the charge with respect to omissions to state material facts.

There is nothing in the indictment with respect to any charge that the defendants failed to advise anyone of payments.

The only reference to payments is in the means paragraph and the jury may very well find that means paragraph is not found and still convict these defendants.

The same problem exists at page 76, where the Court says that the Government also contends that open manipulative and deceptive devices were involved, which enables the jury to find any manipulative or deceptive devices in their opinion which might fit within the broad

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statutory definition.

Of course the same problem then exists when your Honor refers to some of the later substantive counts and refers back to the charge as it came out in counts 1, such as pat page 84.

Again, at page 89. At page 95 again the Court charges the jury that Section 5 prohibits the use of any insterstate facility to sell unregistered securities.

This is not so,but Section 4, which immediately precedes it provides that Section 5 is inapplicable to anyone but the one specifically set forth.

At page 96, the Court charges that counts 14 through 18, the elements of the crime charges in counts 14 through 18, include a charge that the stock sold was require tobe registered and 4, that the defendant knew that the stock was required to be registered.

No such charge appears in this indictment, which is why I objected to the indictment and claimed that it was defective.

At page 103, after your Honor gave what I thought was an accurate description of a control person, your Honor charged the jury that a controlling person in the context of the statute is someone who by one means or another could cause a corporation to file or not to file a

registration statement.

I strongly except to that. I think it is not a correctstatement of the law. I think unless a person is in ctonrol of a corporation, the fact that he may have some power to affect one act of that corporation does not make him a control person.

At page 104 the Court again talks about the Government's claims with respect to the defendants in the unregistered stock counts.

Again I state that the claims of Mr. Wohl or the Government, as Mr. Wohl sets them forth, are not what these defendants are required to meet; they are required to meet the claims made by the grand jury.

The grand jury makes no reference, in my opinion, and-- makes no reference to the fact that the defendants are alleged to be underwriters, issuers, control persons, or anything else.

The Court then refers to the fact that the Government claims that certain defendants were control persons with respect to the 150,000 shares, and goes on to discuss what the jury could find with respect to the 150,000 shares.

I except to that because I don't believe that the control of a block of stock of the company constitutes

one as a control person.

A control person is, as your Honor earlier defined it, one who can control the policies or influence the policies of the company and it was designed to deal with, primarily, officers, directors, principal stockholders or certan persons who could substantially influece policies by virtue of special positions.

Moreoever, there is no evidence in this case which would warrant submitting that issue to the jurors since there is no testimony to indicate either Mr. Haskell or Mr. Stern, the two principals of Stern-Haskell, were under the influence or control of any defendant in this case or any other person.

At page 107 your Honor refers to the "no sale" theory, with no further explanation of what that means and how that becomes an exemption.

I feel in order for the jury to really understand the defense raised by the defendants here that this was exempt or that they believed this transaction to be exempt the Court should instruct them further on what is meant by the no-sale exemption.

Thank you, your Honor.

THE COURT: Now, I will deem every exception just made by Mr.Robson to have been made by every other defendant.

At this time I will only hear any additional exceptions.

Mr. Chester?

MR. CHESTER: No. I will adopt all of those of the attorneys as they go on, your Honor.

MR. KEEGAN: Your Honor, I have a request on page 117, with respect to the SEC release.

I would request the Court to instruct the jury that while it does not have the force or effect of law, as the Court has already said, that it is offered for the good faith of Mr. Chester upon whom the defendants rely.

Thatis what it is there for, and just togive a negative charge--

THE COURT: Did you submit any such request?

MR. KEEGAN: We submitted our requests so long ago-

THE COURT: Did you submit a request embodying what you just said?

MR. KEEGAN: I did not, your Honor.

THE COURT: Anything else?

Mr. Haskell?

MR. FISCHETTI: In addition to Mr. Robson, your Honor, very briefly, at page 88 of your Honor's charge, your Honor relates to the jury counts 9 through 13, and which

defendants are charged in those counts, and you named Mr. Haskell as being charged in those counts, as indeed heis, under the Pinkerton theory, and then your Honor goes on to say that in order to convict the defendant of the offense charged in any of these counts the Government must prove beyond a reasonable doubt the following three elements with respect to that count.

I suggest to the Court that they cannot convict Mr.Haskell of any of those counts by finding what your Honor has said they must find beyond a reasonable doubt; they must also find Mr. Haskell was guilty of count 1, the conspiracy, which your Honor has not charged in this portion.

I object to that.

THE COURT: I think I pointed out to them that the only theory under which they could find him guilty of these charges is on the Pinkerton theory.

MR. FISCHETTI: Your Honor did many pages before, but the Court does say there that if they find any of the defendants committed any of these acts beyond a reasonable doubt he has been found guilty, and that is not true with respect to Mr. Haskell.

As to page 107, your Honor --

THE COURT: Just a moment.

(Pause.)

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THE COURT: I am trying to find where I pointed out to them that he could be convicted only under Pinkerton--

MR. FISCHETTI: I think it is page 67, your Honor, in that area.

That is page 66, may it please the Court.

THE COURT: I will charge them further with respect to that as to counts 9 through 13 as to Mr. Haskell.

MR. FISCHETTI: Thank you, Judge.

Lastly, on page 107, your Honor, Mr. Robson objected to your Honor's not stating the "no sale" theory.

I am not going to address myself to that but, Judge, you also say, in the middle of that page, "accordingly, you are not required to consider each state of the transaction here in issue,the transfer of stock from Stern-Haskell to National Ventures, National Ventures' declaration of a stock dividend and the subsequent creation of a public market in Stern-Haskell, as isolated events."

I object to that language in that the jury may well find the initial sale of the stock by Mr. Haskell to National Ventures was a private sale exempt under the no-sale theory and then they may find subsequently there was a public distribution which may in and of itself be illegal.

They may consider it as a separate event indeed. That was part of my defense.

THE COURT: Any other defendant?

MR. GRIMES: Yes, your Honor.

I would like to call your attention to your discussion of conspiracy. I think you mentioned that the conspiracy encompassed the time from August 1968 through June 4, 1974 and you further went on to mention-- I am referring to pages 49, 53, 58 and 67 of your charge-- further went on to say that if the jury finds one overt act between 8/1/68 ad 8/4/74, this would fulfill the requirements of the conspiracy statute.

I think that your Honor should add the following in there, which we have in our request No. 43:

"The indictment alleges a conspiracy which began on or about August 1, 1968. The indictment was filed in this case on June 4, 1974. Thus unless you find that an overt act alleged in the indictment in furtherance of the conpsiracy was done by any defendant or co-conspirator on or after July 4, 1969, then you must acquit all defendants on the conspiracy count."

THE COURT: Do you have another one?

MR. GRIMES: May I go on, your Honor?

THE COURT: No,don't argue the points.

MR. GRIMES: On pages 61 and 62 you mentioned multiple conspiracies, and I think that your Honor should --

THE COURT: Do you want me to accept your charge?

MR. GRIMES: Not the entire charge.

I just have one sentence that you should add on there.

THE COURT: Read it into the record, please.

MR. GRIMES: "If you find separate conspiracies and that some of the defendants belonged to one and not the other, then there would be no proof of the single conspiracy charged in the indictment and in that case you must return a verdict of not guilty as to all of the defendants under the conspiracy count."

That is all I wanted added.

THE COURT: I don't plan to add that.

MR. GRIMES: Pages 75 and 76, and I will read to you from your charge: "I specifically charge you that if you find that payments of money or stock were made," and then you have "or offered to be made to defendants Wax or Levine" and I think that part should be deleted-- "offered to be made to defendants Wax or Levine" and then you go on, "for selling or promoting Stern-Haskell stock and that the facts relating to these payments were concealed from the customers or were not disclosed to those customers, you may find that the defeneants' failure to disclose those payments or offers of payments" and the "or offers of payments" I

submit this should be deleted --

THE COURT: I don't plan to delete that.

Do you have anything else?

MR. GRIMES: No, your Honor.

MR. FISCHETTI: Judge, since you intend to recharge the jury with regard to Mr. Haskell, may I request your Honor to specifically inform the jury that he is not charged in those counts as an aider and abettor, in addition to saying--

THE COURT: All right.

MR. HIGGINS: I take exception to your Honor's failure to charge the jury on page 13 with respect to the testimonyof an admitted perjurer, that the jury may disregard such a witness' testimony by the mere fact that he had committed perjury on a prior occasion.

With respect to the uncalled witness point that Mr. Robson brought up --

THE COURT: Please don't repeat anything Mr. Robson said.

MR.HIGGINS: He did not raise the point I am raising. I am saying your Honor should have charged the jury, and it was error not to do so, that the jury can draw an inference adverse to either party by either party's failure to call a witness.

With respect to your Honor's charge dealing with the purpose of the conspiracy, on pages 54 and 55, I take exception to your Honor's failure to instruct the jury with respect tothe-- encompassing wire fraud, that wire fraud was in return for and consideration of the defendant Gardner's manipulation of the market and the jury might so find.

Continuing on, your Honor's charge dealing with the membership in the conspiracy and scope of the conspiracy, page 37, I take exception to your Honor's charge that once a person was a member of the conspiracy they were responsible for the liabilities and improper acts of co-conspirators prior to the time that the individual became a member of the conpsiracy.

Continuing on, with respect to your Honor's instruction dealing with the conspiracy, that the jury find a single conspircy, page 61, your Honor failed to charge that the jury, if they should find the Government failed to charge the single conspiracy as alleged in the indictment, that the jury must acquit as to Count One of the indictment.

Continuing on, with respect to your Honor's instruction dealing with aiding and abetting, and if your Honor looks at the charge on page 64, it would appear, and

it reads-- not would appear, but reads that your Honor charged the jury that they may consider someone an aider and abattor and accountable as a principal if they merely associated with the improper acts.

That is on page 64, your Honor.

THE COURT: You are picking out one sentence of the charge on aiding and abetting. I have told the jury they have to consider the charge as a whole and can't pick out one instruction alone.

What you are doing now is picking out one sentence out of the charge of aiding and abetting.

MR. HIGGINS: In that sentence you are telling the jury that if a defendant merely associates with other people then he is accountable as an aider and abettor.

THE COURT: You can't do that. You have to read it as a whole.

MR.HIGGINS: Continuing on, your Honor, on page 66, when your Honor was instructing the jury with respect to the Pinkerton theory, you stated, in substance, your Honor, that the defendant could be convicted under the substantive counts even though he had no knowledge of the events or substantive violations that were committed.

Continuing on, on page 100, in your charge, your Honor, and this ties into your Honor's instructions on page

112 with respect to counts 19 and 20, you instructed the jury as a matter of law that the term "unregistered securities" means that it is a security on which no registration statement has been filed, namely, a security not registered pursuant to the 1933 Act, and that ties in with your Honor's further instruction as to the Government's contentions on page 112.

You stated,your Honor, that it was one of the Government's contentions that Gardner would get unregistered, non-transferrable Stern-Haskell stock.

As your Honor is aware, part of the defendant Gardner's contention is that that term "registered" was an ambiguous term and susceptible to different meanings and your Honor more or less foreclosed that argument by the defendant Gardner the way you put that to the jury.

Also, your Honor, on page 112 we take exception to your Honor's failure to instruct the jury with respect to count 19, at least, that it is the Government's contention pursuant to the indictment that they have proceeded under here that the stock that was given to Michael Gardner was given as stated in the indictment, specifically in return for his assistance in manipulating the market.

Now, that is the specific charge in the indictment

and that is the area that we have submitted the Government has failed to prove the defendant Gardner was involved in and that is a specific factual requirement that the jury must find under count 19, and your Honor has failed to set forth that Government contentionas it is stated in the indictment.

Also, your Honor, the defendant Gardner takes exception to your Honor's charge on pages 115 and 116 in that your Honor failed to charge the jury that as to at least count 20 they must find as a matter of fact that the defendant Gardner was in New York at the time of the alleged conversation.

Your Honor's charge states it is sufficient that the jury find that a conversation took place between theparties named on the dates alleged and that the conversation was in interstate or foreign commerce, and by that language, your Honor, I think you are taking away from the jury their necessary finding of venue.

They have to find, as a matter of fact, that Mr. Gardner was in New York at the time of count 20 and that Mr. LaLone was in New York at the time of count 19.

Also, your Honor, I take exception to your Honor listing the Government contentions with respect to counts 19 and 20in that your Honor affirmatively read the count so

that you would not marshal the evidence, but by virtue of your Honor listing the Governmetn contentions here it has the same effect as marshalling the evidence and, your Honor, in justice, should have submitted and listed the defendant Gardner's contentions at least as to counts 19 and 20.

Also your Honor failed to charge the jury that there was no requirement at the time involved here by the SEC, or in federal law, that a legend be placed on restricted stock.

Your Honor has failed tocharge that and Mr. Wohl conceded and agreed to such a charge in substance at the time your Honor reviewed the charges, and it is my recollection you said you would charge that, at least as far as federal law is concerned, and your Honor has failed to charge the jury on that point.

THE COURT: Wha was that last statement?

MR. HIGGINS: Your Honor told us you were going to be charging the jury that at least under federal law there was no requirement that the restricted stock be legended, stamped.

I know Mr. Wohl was agreeable to such a charge in substance.

THE COURT: Yes, I did, and do you have that charge? I thought that was in here, but I guess it wasn't.

Does somebody have that?

MR. GRIMES: That was in our 35. I think you accepted our 35 except that you would add that it was limited to federal law and portions of the Government's supplement.

MS. HARRIS: Your Honor, I am handing up that portion of the Government's objections-- what the Government suggests you add to that charge.

THE COURT: Are you through yet?

MR. HIGGINS: No,your Honor.

Your Honor also inyour charge in three separate places, pages 113 and 114, in connection with the Government's contentions, stated that the Government contended that the investment stock in fact could not be pledged, and that is just not the fact here, your Honor, there was no legal restriction or proscription against that stock being pledged.

The gist of the Government's case here is not that in fact it was illegal to pledge that stock, but rather that the defendant Gardner misrepresented the nature of the stock, and I think for your Honor to charge the jury that the Government was contending that it was illegal to pledge the stock is wrong, and is not what the Government is contending here.

Ghefe was no legal proscription or law prohibiting the pledging of the stock, but the Government's contention is that Mr. Gardner misrepresented the stock.

MR. HIGGINS: I think Mr. Wohl will agree with that point, your Honor.

MR. WOHL: I agree with that, your Honor.

THE COURT: All right. Just a moment.

With respect to count 20 I did charge the jury as follows:

"Consequently, in order to convict Michael Gardner of Count 20, you must find beyond a reasonable doubt that he caused John Carroll to make a call from his office in Montreal to Gardner's home or office in New York City."

So that is in there.

Now, with respect to the fact that the stock could be pledged, perhaps if carefully represented or properly represented, I will instruct the jury that that is the Government's claim.

MR. HIGGINS: On that same point, your Honor, I think your Honor should also retract the language you used on page 114 at the very top in which you said that the Government was contending that it was an improper use to pledge the stock for a loan. That is not the Government's contention.

THE COURT: That's the same thing. I will now tell them that the Government claims it could have been pledged. Their claim is that he misrepresented the nature

of it. Is that it?

MR. HIGGINS: Yes, your Honor.

That would be it, your Honor. Thank you.

THE COURT: Bring in the jury, please.

MR. WOHL: Your Honor, I am not sure whether this is the same point Mr. Grimes made or not, but it was my impression that the Government does have to establish that one of the overt acts was committed after June 4 of 1969, because otherwise if we didn't establish one of the overt acts was committed after that date comment "conspiracy count" would be barred by the statute of limitations.

THE COURT: I don't follow that.

MR. WOHL: As I understand it, your Honor, in order to bring a conspiracy count within the statute of limitations, the Government is required to establish that at least one of the overt acts occurred within the five-year period prior to the indictment, and this particular conspiracy sort of straddles that dividing line, because the dividing line five years back from the indictment date, the indictment date being June 4, 1974, would be June 4, 1969.

So the jury could be told, as I understand the law, in connection with the overt acts, that they have to find that at least one overt act was committed after June 4,

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1969.

I have a copy of our request number 10, your Honor, which includes that point.

THE COURT: Let's see what we did say with respect to overt acts.

All right, do you want to hand that up?

(Document handed to the Court.)

MR. GRIMES: Excuse me, your Honor. I believe we have that same language outlined in our request number 43 I read into the record earlier, and you have that before you.

THE COURT: Is it different from the Government's 10?

MR. GRIMES: It doesn't read exactly like that. I think it is a little clearer.

MR. WOHL: I don't know whether it was a slip of the tongue, your Honor, but when Mr. Grimes read it into the record a moment ago he said, I believe, July 4, 1969.

THE COURT: I'll read this to them.

Is there anything else before we bring in the jury?

(In open court. Jury present.)

THE COURT: Ladies and gentlemen, I want to give you some additional instructions, in addition to those I

have already given you.

With respect to the conspiracy count, you will recall that I charged you that you would have to find that one of the co-conspirators committed at least one of the overt acts alleged in the indictment.

In connection with that, you would have to find that at least one of those overt acts was committed after June 4, 1969.

With respect to counts 9 through 13, the defendant Haskell is also named in those counts, and you may recall that with respect to counts 2 through 6, I pointed out to you that defendant Haskell could be found guilty of those counts only under what I call an alternative theory with respect to the substantive counts.

Remember, I first charged you that you could find a defendant named in a substantive count guilty of aiding and abetting, you didn't have to find that he did all three or four of the acts charged which constitute the crime.

Now, I told you that as to counts 2 through 6, the defendant Haskell could be convicted only under an alternative theory.

That applies also to the other counts in which he is named, counts 9 through 13, as well as 2 through 6.

In connection with that, I want to point out again what I said as to that, and that is that you have to find beyond a reasonable doubt that the substantive offenses alleged in these counts were committed by one or more members of the conspiracy and that the particular defendant, in this case it would be Haskell, was a member of the conspiracy.

In other words, if he is also guilty of the conspiracy count that the acts which constituted the offenses was done in furtherance of the conspiracy, and that the defendant Haskell might reasonably have foreseen that those acts would be done.

This is true even though he did not otherwise personally participate in the acts constituting the offense, or did not have knowledge of them.

Now, in addition, you will recall that there was some testimony in the case regarding the question of whether certain stock was or should have been legended.

With respect to that, I want to point out that there is no federal law that requires that stock be legended, and there is no rule of the Securities and Exchange Commission with respect to that requirement, or making any such requirement.

However, you may recall or consider whatever

testimony there may be in the record with respect to practice in the securities industry with respect to legending stock as either restricted stock or investment stock.

With respect to counts 19 and 20, in which the defendant Michael Gardner is named, it is the Government's contention that with respect to the stock which Michael Gardner pledged the stock was stricted stock, had not been so legended, and that Michael Gardner knew this, and that this was a misrepresentation which he made. In other words, contrary to what I said to you before in this printed charge which I read, it is not the Government's contention that he couldn't pleged that stock, it is the Government's contention that he didn't properly represent the true nature of the stock, and that is, that it was restricted stock.

So bear that in mind in considering points 19 and 20. That is what of course you would have to find as a fact, that the stock was restricted investment stock and that Michael Gardner knew this, and this was the misrepresentation which he made.

Now, in addition, I want to emphasis again with respect to each of these telephone calls, the one in count 19, you must find that the call was made by Mr. LaLone from New York, as alleged in the indictment, and

with respect to count 20 you must find as a fact that Michael Gardner was in New York at the time.

* * *

* * *

THE COURT: While we are waiting for the jury to perhaps send in a further note, we will take up the matters which we started to take up yesterday at the close of Mr. Wohl's final summation.

You had some objections, or something, to what he said, Mr. Fischetti?

MR. FISCHETTI: Yes, Judge.

Your Honor, first I think it is necessary to apologize for what I said yesterday in a very loud voice. I'm sorry. I was very upset and I hope my attitude didn't annoy the Court.

I object to Mr. Wohl's closing summation, your Honor, on the basis that I believe, having heard it, that he made misrepresentations of the evidence in front of the jury.

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I further state, your Honor, that I believe he made the misrepresentations knowingly and wilfully for reasons I will describe in a moment.

Among those misrepresentations, Judge, and not including all of them, but I believe my fellow counsel have some to make, Mr. Wohl said, in his closing summation -- he first talked about Stern-Haskell losing $13,000 by virtue of the financial statement put in evidence.

He then commented on my summation, which in turn was commenting on his initial summation, when he said the Stern-Haskell mergers and acquisitions were pipe dreams and why did they not close any of the deals.

I think in my summation attempted to point out to the jury by reading testimony that Mr. Stern testified that the reason why the Hatfield deal was not closed was because of the intervention of the SEC.

Mr. Wohl then said in his closing summation if the SEC intervened in the Hatfield deal, was it because the SEC told Hatfield that Stern-Haskell stock was valueless, or worth nothing?

There is no evidence at all about that in the record and the facts in the record are quite to the contrary.

Also he said in that regard that perhaps the

Hatfield Company had found out that Stern-Haskell stock had been reduced in price and was selling at that time for 75 cents or a dollar, which again was not in the evidence at all and again was a misrepresentation of an actual fact.

THE COURT: What was the date?

MR. FISCHETTI: The date of the Hatfield and Stern-Haskell deal, your Honor, was somewhere in the end of 1968, early 1969, when in fact Stern-Haskell was trading between $3 and $4.

The SEC intervened with Stern-Haskell and that was not brought out in evidence.

Your Honor may recall that during my cross-examination of Mr. Stern, it was with great difficulty that I was able toget from Mr. Stern, after repeated objections by the Government, that the reason the deal was not closed was because of the intervention of the SEC and when I attempted to pursue that line as to what the SEC did in its intervention,Ms. Harris objected repeatedly, and your Honor sustained the objection.

Mr. Wohl drew the inference that the SEC went to Hatfield and told him about Stern-Haskell and that is grossly improper.

THE COURT: You say you tried to bring out during--

MR. FISCHETTI: During my examination of Mr. Stern.

Ms. Harris had conducted the direct. I tried to bring out, Judge, that the reason why the SEC intervened and Ms. Harris stopped me and Mr. Wohl said in his summation the SEC may have gone to Hatfield and told them about Stern-Haskell.

That was not in the evidence at all and the facts are completely to the contrary.

THE COURT: Well, on cross-examination, then, you tried to bring out what from Mr. Stern?

MR. FISCHETTI: What happened when the SEC intervened, what the SEC did when they intervened, and I was stopped by objections by Ms. Harris.

Another point I consider critical was that during--

THE COURT: Wait a minute. Finish that. You were trying to bring out what the SEC did when it intervened.

MR. FISCHETTI: That's right, Judge. I was attempting to show this jury that the SEC went to Stern-Haskell, started a civil trial, an investigation, attempting to enjoin them from trading the stock which prohibited Mr. Stern from completing the deal.

Mr. Wohl in his closing summation told this jury that perhaps the intervention of the SEC was that the SEC went to Hatfield and told Hatfield that Stern-Haskell stock

was valueless or maybe, as he said, Hatfield found out they were losing money, by virtue of this financial statement, which was not in evidence.

Finally, your Honor, during the course of my summation and Mr. Wohl's summation, there was talk about Mr. Haskell's purpose at Mr. Gardner's office and I refer to Ms. Benenson's testimony that Mr. Haskell sold a car to Mr. Gardner and Mr. Wohl said in his summation: "There is absoltely no evidence that Jerry Haskell ever sold a car" speaking of Ms. Benenson, when he well knows his own witness testified that he sold three cars at that time.

Judge, I know you charged on a number of occasions, in your charge, that it is the jury's recollection of the evdience that counts, not Mr. Wohl's remarks, not mine, but I don't believe, Judge, most respectfully, that that is a license for a U. S. Attorney to get up and misrepresent the evidence.

Finally, Judge, he said in his closing remarks, when he talked about evidence in the case, he turned and went like this (indicating) and he said, "The defendants did not produce any evidence in this case."

Now, your Honor, I know during the course of summations by attorneys, and I must say this, that Mr. Andrews commented on the Government's failure to call

Mr. Malmeth and Mr. Reynold's comment on the failure tocall Mr. Reynolds' mother or father, but I commented on no one.

I believe Mr. Wohl's proper remarks woud have been that Mr. Andrews had an absolute right tocall Mr. Malmeth, and so on down the line, not to say that the defendants did not produce any evidence.

Your Honor herself attempted to correct that, I believe, by informing the jury that the defendants need not testify.

What is critical to my argument, Judge, is that your Honor ruled that I might not object during Mr. Wohl's summation and your Honor's ruling was based upon, I believe, from what you said, comments by other attorneys and comments by pro se defendants when they referred to exhibits not in evidence, when the perhaps misrepresented the facts and objected during Mr.Wohl's summation, but I did not do that, your Honor, and I only represent Mr. Haskell.

The defendants here are charged with the conspiracy, not the lawyers; I am not responsible for any other attorney's acts other than my own and I charge that this record is crystel clear in the event this has to go to the Court of Appeals, and I sincerely hope not--I want it clear that I am not saying Mr. Wohl improperly drew inferences; I am charging him with gross, improper conduct as a U. S.

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Attorney misrepresenting facts and I say he did it knowing full well that Mr. Haskell for the first time in eight weeks did not have a lawyer representing him.

THE COURT: Mr. Haskell what?

MR. FISCHETTI: Did not have a lawyer representing him, because I might as well have been in my office.

Mr. Wohl used your Honor's ruling that I could not object as a license to grossly misrepresent the evidence against Mr. Haskell, and as a personal comment, your Honor, I don't want your Honor to think that because I believe Mr. Wohl spent a very large part of his summation on Mr. Haskell that I object to that, because I do not.

He could have spent one hour or five hours on Mr.Haskell but to prohibit me from objecting when he did those improper things during his summation was a license.

We can talk about whether he misrepresented or whether my facts are accurate and I think it is a discussion that neither one of us can solve. It is in the record and we will argue it some day, in the event of conviction, but I want the record crystal-clear that I charge him with improper conduct.

THE COURT: All right.

We have a note from the jurors. It will be marked Court Exhibit 9 and it reads as follows:

"May we please have one Coke, three gingerales, four Pepsis and two Tab."

Somebody must be on a diet.

(Court Exhibit 9 marked)

THE COURT: Mr. Clerk, give that to the marshal and let the marshals get the jurors a soda.

MR. FISCHETTI: May I say, Judge, with reference to that note there was an article in Esquire Magazine and a note like that came out and the note read, "May we have 11 Pepsis, one Tab, may we have 11 pound cakes, one Danish, 11 roast beefs and one cream cheese."

THE COURT: With that comical interlude, we can get back to more serious business.

Do you want to reply, Mr. Wohl?

MR. WOHL: Yes, your Honor.

It appears to me that Mr. Fischetti has apparently not had an opportunity to review the transcript and is, rather, going on his recollection of my summation, which unfortunately was going fairly rapidly, and I do have a transcript of what I said and I believe that everything I said in my summation was entirely --

THE COURT: Do we have that transcribed now?

MR. WOHL: I have a transcript here. I don't know whether one has been furnished to your Honor.

THE COURT: I don't have a copy of the summation yet, the reporter has not brought it down, but since you have your copy, Mr. Wohl, we will proceed with that.

You may proceed.

MR. WOHL: I think, your Honor, that with respect to the acquisitions that were anticipated by Stern-Haskell, that Mr.Fischetti made his argument that these acquisitions were something that was going to make Stern-Haskell extremely profitable and I was entitled to make the argument, as I did, in both of my summations, that these were such tenuous prospects that they would not be of great assistance to public investors.

It is true that Mr. Fischetti did obtain from Mr. Stern an opinion on cross-examination that the reason, in Mr. Stern's mind, that the Hatfield transaction fell through was because of the SEC intervention.

In response to that, in my final summation, I made two points that Mr. Fischetti is concerned about and I think both are fair argument on the situation.

I did not say that the Hatfield businessman had in fact learned that Stern-Haskell stock had gone down or that the company was not as profitable as it had originally been represented to be.

What I did was pose the question to the jurors

of what they thought would happen when the Hatfield businessmen found that out, which obviously the jurors could find would have after audited financial statements came out.

I think that was a fair argument to make.

Then Mr. Fischetti and also I guess Mr. Stern were complaining about the intervention of the SEC.

Mr. Fischetti's entire argument there has an underlying assumption and that is that the SEC intervention in some manner became known to the people from this Hatfield company, because if it didn't become known to them, then the deal couldn't very well fall through, or if -- that, it seems to me, was apparent, whichever side you are listening to.

The question then is whether or not the SEC is interfering with some business transaction that ought to be going on in some malicious or improper way or whether, instead, the SEC is doing what it is supposed to be doing, and I posed the question in my summation," Is this the big, bad SEC fouling up some business deal or is it telling businessmen that they are about to give away part of their company for overvalued, overpriced stock?

"The Government submits that it is the latter and that is about the only evidence you can find on that subject in this case."

I sumit that is an entirely proper argument, to make on the evidence, that the SEC by its intervention is possibly breaking up a deal Mr. Stern and Mr. Haskell would like to go through, but it is doing what it is supposed to be doing in that when it intervenes it is intervening because it feels that there is stock that is trading that is overvalued or misrepresented or overpriced in some manner, and I think it does that for the protection of not only the investing public generally who might buy it in the public market, but it may also do it for the protection or there may be a side advantage of the protection of individual businessmen who might be stuck with that stock which has not been disclosed and has not been adequately represented.

With respect to whether Mr. Haskell was--

MR. FISCHETTI: May I say one thing, Judge?

THE COURT: Please don't interrupt. Make notes.

MR. WOHL: With respect to Mr. Haskell's trips to Gardner Securities-- it will take me a moment to find it, your Honor-- that appears on 7086, and as I understand it, Mr. Fischetti's complaint is his claim that I said in my summation that there was no evidence whatever to suggest that Mr. Haskell was at Gardner Securities selling used cars.

What I did in fact say appears on page 7086 of

the record and I refer to the fact that Ms. Benenson had testified, and there is one misstatement here, and that is I refer to Lockwood & Company instead of Gardner and later on the page I refer to Gardner-- the Lockwood reference was obviously a slip of the tongue -- but, anyway, I refer to the fact that"Ms. Benenson said that it seems like he was there every day" - referring to Mr. Haskell.

"What is it that the defense would have you believe that he was doing there all the time, selling used cars? Is there any testimony on that?"

Then I say that when the jurors think about that, in their common sense, page 7086, that they will conclude that cars are not sold in brokerage offices but, instead, are sold on a car lot.

And then I say"The defense would also have you conclude from the fact that there were some cars sold that he was always there delivering papers to them. You don't have to go to Gardner Securities, though, every day to deliver the papers and the license plates or whatever for the four or five cars you might have sold. You might even use one of your network of commission salesmen to do that."

Now, I would submit that quite contrary to what Mr. Fischetti claims is a false misrepresentation, that there was no evidence cars were sold ; I think there

I am accurately referring to the fact that Ms. Benenson did testify some cars were sold, but what I am saying, and I think properly commenting on the evidence, is that the jury should reject the suggestion that Mr. Haskell's being there every day, as Ms. Beneson seemed he was, to her, is based solely on the sale of used cars, as Mr. Fischetti suggested in his argument, is an inference they should reject, and I think I am entitled to do that and entitled to comment on the fact that there was no evidence that every time Mr. Haskell was there, it was for the purpose of either selling used cars or delivering used cars after sale.

The only other point that Mr. Fischetti had was that he claimed that at one point in my summation where I commented on the fact that a number of the defendants had asked for the Government to produce more witnesses, that it appeard to Mr. Fischetti that I gestured directly toward Mr. Haskell.

As your Honor knows, of course, in this courtroom the defense table is lined up behind whoever is talking to the jury and in the place where I was standing, a gesture toward the group of defendants could have been interpreted by Mr. Fischetti as a gesture toward Mr. Haskell.

The Government would submit that here a number of defendants complained about the Government's failure to

call other witnesses and obviously where I have one hour to respond to summations that are made by seven different lawyers, I think it is understandable that I would refer generally to the defense position of that sort.

I don't believe I gestured directly toward Mr. Haskell, I certainly didn't intend to do that, but rather I gestured in the area of the defendants generally and I think that obviously that was the way that argument could only have been taken by the jury because, as Mr. Fischetti points out, that was not one of his primary areas of reliance and if I gestured toward Mr. Haskell in that regard, it would seem to me that the jury would have to wonder what I was talking about, because the argument would make no sense.

It was only several of the other defendants, Levine, Wax, Feiffer and Reynolds and Chester,and I don't remember whether any of the other defendants made that same argument, but they seemed to be the ones primarily making the argument, and I certainly do not believe I singled out Mr. Haskell, I didn't intend to do that, and it wasn't toward Mr. Haskell that the argument was directed.

Consequently, I think that I was scrupulously accurate in the references to the record and I think that the record will also support my comments in my summation

concerning what I regarded as Mr. Fischetti's not inaccurately referring to the record in his summation but selectively referring to the record in a manner that required me to bring to the jurors' attention other passages of the record that I think was entirely correct and properly done.

MR. FISCHETTI: May I just say, Judge, we could be here all afternoon, but I just don't believe what Mr. Wohl has told the Court is accurate.

I don't have a transcript, Judge - I am going on my memory, but I have a pretty good memory as to testimony and summations.

Mr. Wohl just talked to you about Hatfield and he never mentioned to you, Judge, and if it is not in that transcript, I will eat it, these words" Could they" referring to Hatfield "could the deal have fallen through because they found out the stock went down to 75 cents or a dollar."

If that is not in that transcript, Judge, I will eat it.

Secondly, Judge, he said that a number of defendants have commented on the Government's failure to call witnesses--

THE COURT: Let's take one point at a time.

With respect to the SEC intervention, during your summation, Mr. Fischetti,you made the point that these deals fell through because of SEC intervention, is that right?

MR. FISCHETTI: That is correct; one deal, Hatfield.

THE COURT: So that that was a proper area for Mr. Wohl to have gone into on his rebuttal, wasn't it?

MR. FISCHETTI: Correct.

THE COURT: Mr. Wohl says that what he did was to put a rhetorical question,in effect, for the jury, as to why the Hatfield deal might have fallen through, because, as you pointed out, when it came to cross-examination of Mr. Stern, I sustained objections to going into what the SEC had done, is that right?

MR. FISCHETTI: That is correct.

THE COURT: You recall that I instructed the jury that they were to draw no inferences unfavorable to these defendants from the fact that the SEC had been investigating--

MR. FISCHETTI: You did that also, Judge.

THE COURT: As I did in connection with the indictment, because that is in the same category. What the SEC investigated and why is not before this jury, only the

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evidence in this case.

So that Mr. Wohl is properly rebutting an area into which you had gone.

With respect to your claim that Mr. Wohl deliberately misrepresented the facts, the Court finds that that is not so.

I also instructed the jury repeatedly that it was their recollection of what the evidence showed and not the attorneys.

MR. FISCHETTI: You did, your Honor.

THE COURT: So that if he misstated any facts in the record, the jury was instructed as to that.

With respect to the matter of failure to call witnesses by the defense, I noted during Mr. Wohl's summation that each lawyer, or at least two of you, Mr. Andrews and yourself, and I think probably Mr. Higgins, had made a note at that point, when he said the defendants failed to call any witnesses, and you recall when you got up you said "I see you are smiling" and the record should reflect that.

Do you recall that?

MR. FISCHETTI: Yes.

THE COURT: Do you know why I was smiling?

MR. FISCHETTI: Because you knew what I was going to say, but you didn't know I was going to scream.

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THE COURT: I knew you were going to object to that, I had already sent for the case, already had it here, United States v. Dioguardi, 492 F. 2d. 70, a 1974 Second Circuit case.

That was what the smile was about, because I saw every lawyer busily writing when Mr. Wohl referred to the fact that the defendants had not called any witnesses; so I listened very carefully to everything he was saying about that and it was plain to me that he had kept in mind that case, a recent decision by the Second Circuit, and as soon as he got through, as you know, I instructed the jury that all he was saying was that the defendants could have, if they wanted to, call witnesses also to rebut anything the Government had brought out and that was not to be construed as a suggestion that the defendants individually should have taken the stand.

That is exactly what the Second Circuit ruled, thatit was proper for the prosecutor to make such a remark especially after defense counsel had gotten up and made such a point of the Government's failure to do so; isn't that so?

MR. FISCHETTI: Yes, Judge.

Your Honor just said defense counsel, and that is my quandary. I am not defense counsel. I am Jerry

Haskell's lawyer.

Mr. Wohl can say Mr. Andrews said--

THE COURT: But he didn't say Mr. Haskell failed to call --

MR. FISCHETTI: He said defendants didn't produce any evidence during that time. That was unfair.

He is a seasoned prosecutor and knows what to do.

THE COURT: That is contrary to the suggestion I heard, that we have a joint defense here, and therefore we ought to be able to talk to each other and pass each other notes and share the transcript-- I heard that at least fifteen times and now you are saying "We didn'thave a joint defense."

MR. FISCHETTI: Judge, you never heard that from me during the course of this trial, and Mr. Wohl will even stipulate to that. This was not a joint defense as far as I am concerned.

THE COURT: The fact is, to end this argument, that Mr. Wohl did not say Jerry Haskell failed to call any witnesses because there was plainly other defense counsel and he had only an hour and could not go into every detail.

With respect to your statement that I prevented you from getting up during his closing summation, I want to

repeat again the reason for that, and that is because it is the Court's view that defense counsel and the Government's counsel ought to have an opportunity to make an uninterrupted summation to the jury.

That's the first point.

Obviously if during the course of the Government's summation the Government's lawyer says something which would result in a mistrial, we could always take that up at the end of his summation, because if it should be granted, that would be the end of the whole case and we would have to try it again, and if it is denied there is no point in interrupting at that point.

I listened to Mr. Wohl's rebuttal, as you did, and I found no basis for stopping him to hear any motion for a mistrial, and if any had been made, it would have been denied.

The reason I did that, that is, asked defense counsel and the Government not to interrupt each other, was over matters of fact with which the lawyer was in disagreement, because I had already told the jury that what the lawyers would be doing would be giving their recollections of the facts and of course, their memories could be faulty like everybody else's because they are human beings and they cant remember a record of eight weeks, of 8000

pages, accurately, nobody can, and the jury realizes that, too, and the record will reflect that as soon as Mr. Wohl got up to make his summation,every time he mentioned a particular defendant, that lawyer objected, including you, to his statement of some fact.

MR. FISCHETTI: I did not, Judge, that is incorrect. I did not object.

THE COURT: Maybe I am in error as to that, but I remember at least three lawyers jumped up.

If you go back to the beginning of this case, you will find that when Mr. Wohl started examining witnesses, we had all kinds of meritless objections from defense counsel, and all that was going to do, obviously, was to delay the trial and drag it out more than it has already.

That was the reason for restricting the interruptions of Government counsel and defense counsdl during their closing statements, because we have had that throughout this case and you know, and the record will reflect, that no matter how many times I have told Mr. Rubinson or Mr. Chester and some of the lawyers, who should know better, not to do certain things, they did it anyway.

When this case is reviewed on appeal, all the Court of Appeals has to do is to read Mr. Chester's closing statement to the jury and they will know what we had to put

up with in this case.

This is not a usual and normal case or a short case where lawyers and defendants were under control at all times. This was a case where the Court was required to restrict the cross-examination lest we be here until the Christmas after next, it was required repeatedly to tell lawyers not to shout, not to talk while the Court was talking, and not to disobey Court orders.

So the restrictions which were imposed here were necessitated by the fact that two defendants were representing themselves who, among other things, repeatedly defied the Court in the presence of the jury, and repeatedly said things before the jury which obviously should never have been said.

Now, for me to tell Mr. Chester yesterday not to say certain things would have been a waste of time, as you know, and he would have said it anyway.

So the only thing I could do to get this trial over was to let him go ahead and say it and get it over with, and Mr. Rubinson, the same thing, every time I told him something he would just defy me and go right on and say whatever he wanted to say.

He was brandishing in the face of the jury exhibits he knew were not admitted into evidence, he knew

good and well it was improper, he did it anyway.

So the restriction here was to try to bring some order out of obvious chaos, which was a part of the strategy here, as far as I can see, at least on the part of those two, and the restrictions in any view were absolutely necessary, and to permit lawyers to have interrupted these summations I think would have resulted in a shambles in this particular trial.

If anybody else wants to say anything, I will hear it.

MR. ROBSON: Your Honor, I would like to go on record as joining in Mr. Fischetti's objections with respect to the statement by Mr. Wohl on the failure of defendants to introduce evidence and to move on that ground for the withdrawal of a juror.

THE COURT: That is denied.

MR. ANDREWS: Your Honor,I have an application similar to Mr. Fischetti's based on what I consider to be misrepresentations by Mr. Wohl to the jury during his final summation at a time when I was probably properly shackled by the Court, but I would like to have had an opportunity to make these observations prior to the time the jury began its deliberations so that if your Honor saw fit,you could have corrected what I consider to be

very, very substantial prejudice caused to my clients by Mr. Wohl in his misstatement of the evidence.

I am going to refer specifically, if I may, to the most serious misstatement, and that was when Mr. Wohl told the jury very glibly, as though there was no room for argument or interpretation, that Weitzman testified that he saw Feiffer take stock down, and that is stock in Stern-Haskell, to Mr. Levine at Lockwood.

The testimony was absolutely contrary to that and it was a very, very, very lively issue throughout the trial whether or not Levine ever knew what was going on by Stein in the background with his placement of the Stern-Haskell stock.

Weitzman's testimony on the point was that he accompanied Feiffer to Lockwood, and I can read it to you right out of the transcript, Judge. He said the following, page 1494, on direct examination by the Government:

"At Lockwood we first walked in and we saw Mr. Levine and Mr. Feiffer and he had a short, very short, conversation and then" and he was interrupted by a question by Mr. Wohl:

"Q Did you hear what they said?

"A No, I didn't."

And then he went on to say:

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"Then Mr. Feiffer and I went into a large room there and it looked like a trading room to me because it had a lot of desks and he proceeded to separate certain stacks of Stern-Haskell certificates into different piles, different packs, and that took a while. I don't recall how long. Then we finished, we left there, we left."

Now, that is all he ever said about Levine knowing, a brief conversation with Levine and then he and Feiffer went into another room.

Sidney Stein again on direct examination by the Government made the following statement:

Page 3515. Stein in response to a question by Mr. Wohl, and this is his own star witness:

"I may add to that that I don't think Mr. Levine was aware it was happening because it was happening upstairs and he didn't know the certificates were being signed." That is, talking about Stern-Haskell certificates.

I tried to pursue that on cross-examination to find out what the basis of his opinion was as to whether or not Levine knew, which we maintain he did not know, obviously, and the Government objected and I was foreclosed from pursuing it, and the record is clear that that is so.

Mr. Wohl, notwithstanding, (1) his witness Weitzman unable to say that Levine was there when this

stock tarnsaction took place, his other witness saying he didn't think Levine knew that the stock was signed by Lockwood and Ben Malmeth signed the stock and he worked on another floor and did it as a favor to Stein, Wohl got up in front of that jury and said, and you remember Weitzman's testimony that he took the stock to Levine, and I think it was devastating and so overhwelmingly prejudicial that we ought to have a mistrial on that basis and that alone.

We made the point throughout the case and through cross-examination that the activities of Mr. Wax in the retailing of the stock of Stern-Haskell were totally and absolutely inconsistent with the activities we would expect of an individual who was taking money under the table for pushing stock on gullible, helpless, stupid investors.

I said Ms. Dundish testified when she came in to buy the second group of Stern-Haskell, when the price had fallen, that Wax told her it didn't look good, indicated wait, indicated it had to be checked out and she went right ahead and bought it herself.

I said that Rabbi-- I forgot his name-- Schuchalter, when Mr. Grimes cross-examined him, testified that if Wax told him to buy 500 shares instead of the two he bought, he probably would have bought 500 shares.

Are those the acts of a man pushing for money

under the table?

Mr. Wohl said, "I examined the record and it just doesn't say that"and I would like to show your Honor what the record says, with respect, first of all, to Rabbi Schuchalter.

"Q So with respect to Stern-Haskell, you said you purchased 200 shares, is that correct?

"A Right.

"Q If he" referring to Wax "would have recommended 500 shares, would you have purchased 500 shares?

"A I probably would."

That was the relationship he had with the Rabbi.

Mr. Wohl says the record doesn't say it and there it says it.

These are so substantial that it can't be passed off with "Well, the jury will recollect what was said."

Mr. Wohl is the Government's attorney and has a lot of prestige in the eyes of this jury and he got up there and said "it never happened."

Here is Lena Dudnish and Walter Wax shoving stock down her throat at a dollar and a half a share.

"Q Do you recall in August having had a conversation with Mr. Wax about your secondpurchase of Stern-Haskell?

"A When I called in and he said that they were not

rm:mg 43 7315

doing so well at the time and I think they had to be checked out, that is why it took so long because I kept calling him."

Wax wasn't pushing the stock, he said they were not doing well.

"I said, 'What happened to Stern-Haskell,' and he said, "It takes time to check." 'They were in the black or something, I don't know.'

"Q Knowing that they were not doing well, as Mr. Wax told you, and not having asked for any independent information about the company, you nevertheless went ahead and bought some more stock, is that correct?"

And her answer, the little old lady gulled by Walter Wax,"Well, to bring down my average I figured I would see 2 quicker than I would see 4-3/8."

Mr. Wohl tells the jury he shoved it down her throat. She didn't say that Wax pushed it on her -- these things are so essential to the defense in this case, so essential to the theory of the prosecution, to negate the inference the prosecution wants the jury to take, that Walter Wax is a voracious man without conscience, taking money under the table, and Mr. Wohl deliberately said that I was not right and I was right, and I don't know what now can be done to straighten it out. Devastating.

bme 1

With respect to those things, your Honor, I am of the opinion that Mr. Wohl took a little bit of unfair advantage of the fact, one, that I would never be entitled to get up and rebut him and I couldn't cover these points with this kind of specificity when I summed up to the jury because I just didn't have time, and I can give your Honor a list of 15 areas that I could not touch in my summation, because of the time constraint, and I represent two complainants -- I never got a chance to come back at Mr. Wohl and point out these facts to the jury, that it was indeed he who misrepresented what had happened and not me to them.

I don't think the cliche, and I call it a cliche, that it is the jury's recollection that counts, will cover this kind of overwhelming prejudice. To go beyond that, Judge, Mr. Wohl got up and said, and mind you, we had never been given any notice that any prior similar act, any prior activity would be charged against my clients, Mr. Wax and Mr. Levine, at this trial, but Mr. Wohl got up and made a statement about a blotter of Lockwood and Company, and big book in evidence, because of our stipulation, and only because of our stipulation, and the customers' records of Mr. Wax, which are in evidence only because of our stipulation, showed that we, Lockwood, or A. T. Brod,

bme 2

inferring Wax and Levine, dealt in many, many of the stocks that Sidney Stein listed on his famous list of 250 corrupt ventures.

He never during the trial proved that we dealt in any other stocks so we could have brought out the circumstances.

THE COURT: I don't know if I follow that. You say there is now in evidence two huge books?

MR. ANDREWS: There is the Lockwood blotter, Judge --

THE COURT: What is that exhibit number?

MR. WOHL: 500.

MR. ANDREWS: One day we were in this courtroom--

THE COURT: It was admitted when I wasn't around?

MR. ANDREWS: No, you were here, Judge. You came in at the very end, your Honor.

We had this discussion right down at this corner of the table and Mr. Wohl asked "I would like to admit this into evidence because this is part of the area where we got the information for our charts, and it is just back-up material" and we said, "With respect to Stern-Haskell?"

"Yes."

And we agreed. Likewise, the customer lists or customer accounts of Mr. Wax, they were admitted with

bme 3

the clear understanding, at least on our part, from the discussions we had with Mr. Wohl, and I think reason will tell your Honor that must be so, that they related to Stern-Haskell transactions and to redact all others from them, from these huge books, would have been a monumental task.

In the spirit of cooperation, we said we would stipulate, let it go in, as we did with respect to everything else, and we would have stipulated to all of it, but Mr. Wohl got up on his summation and said, "That blotter will show you that Wax and Levine traded all these stocks that Sidney Stein came in here and said were corrupt and crooked."

I say that is definite stating, reversible error, prejudicial error, no way I can fight back, not one word of testimony came out about any other dealings of Mr. Wax and Mr. Levine with Mr. Stein -- never, ever happened. We were never given any notice that it would happen, never did happen at trial, but Mr. Wohl got up and said that this book would show there was a constant business relationship with Stein, Wax and Levine.

That was prejudicial, that was wrong and it was done, I think because he knew I never would have an opportunity to rebut it.

bme 4

THE COURT: Do you want to reply, Mr. Wohl?

MR. WOHL: Yes, your Honor.

MR. CHESTER: Judge, he went down a long list and just threw it --

MR. ANDREWS: He mentioned 10 or 12 stocks, Judge.

MR. HIGGINS: Your Honor, if I may, I will read off some of the names --

THE COURT: Just a moment.

Mr. Wohl will reply and then I will hear from you.

MR. ANDREWS: Judge, I would like to point out to your Honor the gestures with which this was done before the jury, just so your Honor won't lose the impact of it-- this is the book we are talking about, and you have to be almost Hercules to pick it up --

THE COURT: I didn't see that book picked up.

MR. ANDREWS: He took it, picked it up and dropped it here and said, "It is replete with deals Wax and Levine did with Stein."

THE COURT: Did that happen yesterday, Mr. Wohl?

MR. WOHL: Yes, your Honor.

MR. FISCHETTI: I think, Judge, his words were

bme 5

"These are the list of stocks that Mr. Stein dealt in and they are in this book, you can bet your life they are in this book, take this book in the jury room and look at it" and he named the stocks.

MR. HIGGINS: Mr. Wohl represented to me when I stipulated on behalf of Mr. Gardner as to the admissibility of those exhibits that the purpose and sole purpose of those exhibits were to support the documentary charts and that was it, nothing else, your Honor.

MR. ANDREWS: We all agreed that they go in by stipulation because they were to support the chart, Stern-Haskell, and that's all.

THE COURT: Mr. Wohl, if we can get these lawyers to stop talking long enough, you can reply.

MR. WOHL: Let me start with the point about this blotter, your Honor, as well as all the other exhibits, which I think are about 500 through 680.

I think those exhibits were put into evidence and it was explained to the lawyers that they would underlie the chart. I recall no stipulation whatever that they would be limited to that purpose, that they couldn't be shown to the jury, that the jury couldn't look at them if they wanted to or that there was any other reason why anybody couldn't refer to them, and obviously we had a number

bme 6

of situations in the trial where portions of exhibits were put in and redactions or people said that a specific part of an exhibit was being put in and if they had wanted to do that in this case, they could have, and there was no agreement like that at all.

This particular blotter was available to the defense counsel long before the trial, it was available in these file drawers, it was down here for inspection and I think your Honor requested that we make exhibits available a substantial period of time before they were going to be put in, and this blotter was one of the things available for anyone to look at.

Now, we did not rely on this point in any manner whatever until Mr. Andrews in his summation made the statement that --

THE COURT: Mr. Higgins, you will have to sit down until Mr. Wohl finishes. I told you before I will give you a chance to talk.

MR. WOHL: Mr. Andrews made the statement that there was no evidence whatever put in on any kind of connection. I don't have the language --

MR. ANDREWS: What I said was the only evidence of any connection was the Blank Furniture deal where Stein waltzed Weitzman in and asked Stein to do the underwriting--

bme 7

THE COURT: You are going to have to try to remember the reporter is trying to get this.

MR. ANDREWS: What I said to the jury was the only evidence of any prior relationship with Stein and Mr. Levine was the Blank deal where Mr. Levine threw them out of the office because it was a fraudulent deal which later the SEC withdrew.

THE COURT: Is that the point you had in mind?

MR. WOHL: Yes, your Honor. At the point that Mr. Andrews made that argument, which I would think is not an entirely good faith argument, in the first place, because Mr. Andrews, I would submit, must have been aware of the fact that his clients were involved in a number of other transactions and obviously the Government doesn't always put in all the similar acts it has, particularly when it has a six or seven week trial, and Mr. Andrews gets up and makes a comment like that and right in the record there are documents received in evidence that show that Mr. Wax is trading in these same stocks that the witnesses have testified on cross examination were stocks that they dealt in.

I would submit it is entirely proper rebuttal to Mr. Andrews' point.

MR. ANDREWS: Judge, what I said was "You have

bme 8

heard no evidence."

Mr. Wohl gets up because I have knowledge that Levine traded another stock for him and it is not in the record here and he says I am not in good faith because I say they have no evidence.

The Government is at liberty to put in such evidence and did it ad nauseamin this trial about stocks that have nothing to do with this case. I don't want to walk out of this courtroom and saying you can't take a U. S. Attorney at his word, but when the man comes to you and says the purpose of putting in this book is to back up the charts and we stipulate to it, to back up Stern-Haskell, does that in any kind of good faith entitle him to come back and hit you with every page in the book that has nothing to do with Stern-Haskell.

Maybe I am not a very good lawyer, maybe no, because I take the man at his word, or apparent word, but if he had said, "I intend to use all the other pages to show all the other deals you did with Sidney Stein" I certainly would not have stipulated, but when he treated it like a record pro forma in evidence to back up his great, big, beautiful chart, of course I went with it and I don't think you can sanction this kind of duplicity because if you do they will do it again and again, and that is not the

bme 9

way justice should be administered around this courthouse.

THE COURT: Are you through, Mr. Wohl?

MR. WOHL: No, I am not, your Honor. I want the record to be clear that this blotter was not represented, as it may have been with some other documents, from time to time, such as these LaLone diaries -- there was no understanding so far as I knew, that only certain entries were coming in and I don't think that it is fair to say that the Government misrepresented this blotter.

It is true that we said that the purpose, why we are offering it at this time, is to back up the charts, as is all these other documents, but all of them have entries on them that the Government submits were in evidence, and if they had wanted to have an understanding that only the Stern-Haskell entries were in evidence, I submit that would have been something that we could have talked over.

THE COURT: Mr. Andrews, was that pointed out at the time the document was received, that there was such a stipulation?

MR. ANDREWS: What is that, your Honor?

THE COURT: That the Government had agreed that the only thing in evidence or which would be considered in evidence, was the data relating to the chart, which is Stern-Haskell? Was that brought to the Court's attention

bme 10

at that time?

MR. ANDREWS: I can't say either way, your Honor. Everyone in this courtroom, and I think even Mr. Wohl at that time, and maybe we should have an evidentiary hearing where we can all take the stand under oath and revive that discussion -- even Mr. Wohl at that time had to believe that it was just going in to back up the chart.

He set me up to believe that and if he was setting me up I can't believe anybody could be that artificial, that deceitful.

MR. ROBSON: May I say something on this, your Honor?

THE COURT: No. We are going to have some order.

MR. ANDREWS: Let them talk, your Honor, because they were there, and I don't know whether it was stipulated that only those entries relating to Stern-Haskell would go in. I didn't even consider raising the point because I thought it was absurd, would waste the Court's time.

I didn't even consider making it because the way Mr. Wohl put it to me, and that he would later try to sandbag me with other entries in that book, and I stipulated. Would I have stipulated if we thought we were going to get every entry in the book against us? I don't

bme 11

think anybody could believe that, your Honor.

THE COURT: Mr. Higgins?

MR. HIGGINS: With respect to my recollection, I had a conversation with Mr. Wohl and Mr. Schatz concerning this blotter and I asked Mr. Wohl what the purpose was and I was told the purpose was to provide the foundation for the two charts and I said, "Are you relying on that only with respect to Stern-Haskell and that is what you want to use these blotters for?"

And he said, "Yes."

I said, "Do I have to look through these things? Is Michael Gardner Securities listed in there anywhere? Is it correct you are only relying with respect to Stern-Haskell?"

And I was affirmatively represented that. That book could have been here from here back to Doomsday -- no, the other way. The fact that it was here is irrelevant. Once Mr. Wohl made that representation, at least to me, and to the other counsel, I assume, it is highly improper and wrong for him then to argue in his rebuttal, as he did, concerning those items, and that affects my client in that it was technically damaging against Wax and Levine and it was admissible on the conspiracy theory and the jury considers that and that spills over to my client, Mr. Gardner,

bme 12

I am prepared to have a hearing, if your Honor wants it.

MR. ROBSON: I would like to state my recollection and some of what I am going to say I am sure is on the record.

Your Honor may recall when those exhibits were first offered, Mr. Wohl didnot introduce any of the documents into evidence and indicated he was simply going to rely on the fact that they were available for our inspection.

I objected to the procedure and said it was proper only for the exhibits to be in evidence so they would be available, and at that point we got into the stipulation to get the books and underlying documents into evidence, and your Honor may recall one of the questions I asked on the record with respect to the underlying documents, when I discovered there were transactions with other brokerage firms, was whether or not these records related to transactions between brokerage firms that didn't involve Lockwood, because in that case I was going to ask that witnesses be called for the purpose of identifying those records so that we could find out the underlying facts of those transactions, and Mr. Schatz assured us at that point that the only transactions in the underlying documents were the

bme 13

transactions between other brokers and Lockwood and Company, which were the other side of the Lockwood records, and the books were only supposedly offered for the purpose of giving us sort of a summary material with respect to the underlying documents, and I am certain that I said to Mr. Wohl, certainly with respect to the Stern-Haskell record, "I have no objection."

Unless your Honor thinks that all of counsel at this table are idiots and that we would allow into evidence without even looking at them, books and records covering transactions over a period of a year or more, completely unrelated to anything in this case, then you must accept the fact, and I must say, your Honor, what Mr. Wohl has stated in this Court, when he says there was no such understanding, and I cannot recall a specific give and take in which I or someone said to Mr. Wohl, "Do you understand we are only stipulating to the Stern-Haskell records?"

Honesty and integrity among counsel requires that it may come from all the circumstances and I say Mr. Wohl is guilty of unethical and unprofessional conduct when he stands up in this Court and says he understood as a result of these conversations that we were consenting to the introduction of testimony about all of the transactions that Lockwood had with God knows who, when we consented

bme 14

to that book as an underlying record for that chart and I think his conduct was horrendous.

THE COURT: How did you come about the book, was that given to you by Lockwood or did you subpoena it, or what?

MR. ANDREWS: It came under subpoena, your Honor, as to all the Lockwood records.

MR. WOHL: That's correct, your Honor, it was either a subpoena or a Court Order.

THE COURT: As I said, I don't have any specific recollection of that document when it came into evidence. Maybe what we should do is to try to find that. I think the reporter generally lists in the back of each volume where the exhibit was admitted and we could probably somehow discover whether there was any limiting agreement among counsel at that time.

(Pause.)

THE COURT: Have we found it?

MR. KEEGAN: Beginning on page 4432, your Honor, March 3.

THE COURT: We will take a five-minute recess.

(Recess.)

THE COURT: Did somebody want to be heard on what we have found?

bme 15

MR. ROBSON: Yes, your Honor. I think it is fairly clear from the colloquy starting at 4430 as to my statement at the time the exhibit 500 was offered in evidence, which was that I had no objection subject to connection --

THE COURT: 500 is the big book?

MR. ROBSON: Yes. I think it is so clear that it hardly requires a statement, that the whole purpose to produce that was to provide a foundation for the charts and they were introduced solely for the purpose of backing up the Stern-Haskell transactions by Lockwood.

My recollection, I realize, was wrong earlier this morning when I looked at the transcript, that I had suggested to the Court just the opposite, namely, that the exhibits not be offered in evidence but just made available, because they served to back up the chart and when I suggested they be taken subject to connection, I suspect that my concern was with a statement that Miss Harris had made, that certain of these exhibits might be used in connection with the testimony of certain witnesses and I was not certain, possibly, what she meant by that.

So for the protection of the record, I did not object, subject to connection.

I cannot conceive how anybody reading this, par-

bme 16

ticularly Mr. Wohl and Miss Harris, could argue that all of these experienced defense counsel were consenting to the entry of these books for whatever purpose Mr. Wohl sought to make of them.

The horrendous nature of the error here by Mr. Wohl comes from the fact that had he attempted to use these books for some other purpose during the course of the trial in connection with the testimony of a witness, even had he attempted to use them in his initial summation, there would have been an opportunity for defendants to reply and certainly during the course of testimony there would have been ample opportunity for us to object and I am sure your Honor would not have permitted Mr. Wohl, because there was not basis for such testimony, to have allowed any witness to testify to Mr. Stein's relationship with Mr. Levine in connection with any other stock other than the ones named in this indictment and in the bill of particulars.

So for us now to be confronted with a situation in which this material is thrown at this jury in a final summation --

THE COURT: Well, on page 4432 -- in fact, we should go back to the bottom of 4431:

"THE COURT: This is a large number of exhibits and do you intend to offer all these exhibits in evidence?

bme 17

"MR. ROBSON: Your Honor, may I make a suggestion?

"THE COURT: Can I get an answer to my question first?

"Do you intend to offer all these exhibits in evidence?

"MS. HARRIS, Yes, your Honor.

"MR. ROBSON: Your Honor, I am going to make the suggestion, which I have seen followed in a number of other cases, which may be able to save everybody a lot of time:

"If I understand correctly, all of these exhibits are being offered for the purpose of providing a basis for the charts which are going to be testified to by a Government agent, is that correct?

"MS. HARRIS: Among other purposes."

MR. ROBSON: She then goes on to say that certain of them will be selected out and witnesses will refer to them but basically they are the underlying documents for the charts, and what she was saying there, and I think that is fairly clear, is that some of the documents -- there were two categories of exhibits, one were the books and the other were the corporate records from which the books were made, and some of those records were identified, or testified to by various witnesses for the purpose of showing

bme 18

other things, for example, that Albert Feiffer's signature appeared on certain documents, and so forth, and that is what she meant by "for certain other purposes" and she said certain of them will be selected out and certain of them were selected out and there was testimony about certain of the underlying documents and then she says, "But basically they are the underlying documents for the charts."

Later on, if you Honor will look at page 4437, I say "500 also I would not object to subject to connection."

THE COURT: That is the big book?

MR. ROBSON: That's right. What I am saying is that there is no connection with respect to-- in addition to the fact that it is quite clear they were basically offered as underlying documents for the charts, there is no basis for accepting the non-Stern-Haskell transactions in those books as evidence in this case, and I am satisfied that had any attempt been made to elicit testimony with respect to those transactions your Honor would have sustained an objection, that there was no connection between such testimony and such entries to anything in this case.

THE COURT: Well, the objection was overruled and the document admitted?

MR. ROBSON: No, your Honor took them subject to connection. Page 4436, your Honor, and Miss Harris makes

bme 19

the statement "All the documents are with respect to transactions in Stern-Haskell stock, that would be the stipulation, your Honor."

THE COURT: Over on page 4442 is where they were admitted and they were apparently admitted at that point -- we went over the stipulation and I said, "With that understanding, it will be admitted into evidence. You have the clerk start marking some and he can finish in the morning and at recess, and so forth."

MR. ROBSON: That understanding related to the fact that some records were missing.

THE COURT: But the stipulation was what, that these were all business records, isn't that so? The understanding was that there were some missing, but other than that, they were admitted?

MR. ROBSON: The stipulation is at page 4436 -- it starts a little earlier than that, at 4436 Miss Harris reads the stipulation "It is stipulated between counsel for the Government and counsel for the defendants, and by each defendant, that if authorized representative of Granger, Shaskan, TPO Lockwood were called, each would testify with respect to the documents that they were authentic."

THE COURT: That they were business records.

MR. ROBSON: Yes. And she says she will put the

bme 20

exhibits to which that refers on the record --

THE COURT: And Mr. Andrews objected that there were some missing.

MR. ROBSON: She then identifies all the exhibits, including Exhibit 500, which apparently in this transcript is referred to as 300, but that is a typo, and then she talks about Exhibits 501 through 6669, and this is Miss Harris talking about the stipulation and in the last sentence, all of the documents were with respect to transactions in Stern-Haskell stock, which is precisely what we all understood and in no way, your Honor, could anyof us have been so stupid as to stipulate to allow evidence of all of the transactions in that book -- I don't even know how many years they cover, but we were trying to simplify the proceeding.

THE COURT: I will hear from the Government.

MS. HARRIS: With respect to 4436 and the stipulation, your Honor, that phrase, "all of the documents are with respect to transactions in Stern-Haskell" was meant to refer, and I think it is fairly clear it does refer, to Exhibits 501 through 669T, which are the documents that had come in.

The court reporters have put the next sentence "That would be the stipulation, your Honor" in the same

bme 21

paragraph, but I believe that that was a final statement not relating necessarily to any other portion --

THE COURT: Well, I thought it related to the documents you were going to pull out and have a witness testify about. Was that 50[illegible] to 669T?

MS. HARRIS: That's correct, your Honor. Those were the documents, as opposed to the books.

Your Honor, one more thing, just a little background:

Prior to the stipulation, read into the record, I believe it was that morning, or perhaps the night before, I am not certain which, I copied what we proposed to read into the record and provided counsel with Xerox copies of that proposed stipulation. They made a number of suggestions which we adopted with respect to what the stipulation would be, how it would be phrased, and that draft did not include anything with reference to these documents being limited to Stern-Haskell transactions --

THE COURT: It is now 1 o'clock and I think we should bring this to a close. The purpose of this recess was to find whether there had been any specific stipulation with respect to the admissibility of these documents. We have now found it, the stipulation was limited to a stipulation that the documents were authentic and that they were

bme 22

documents made and kept in the regular course of business. Moreover, as I pointed out on page 4432, Miss Harris pointed out that these documents were being admitted, all of them, including 500, with respect to testimony which would be elicited from witnesses regarding the charts, among other purposes.

As she said, the documents would be admitted for that purpose, among other things, and then said certain of them would be selected out and witnesses will refer to them, but basically that they are the underlying documents for the charts, indicating that it was not limited to the underlying documents for the charts.

Now, in any event, I gather what you are making, Mr. Andrews, is a motion for mistrial based on Mr. Wohl's summation with respect to that, is that it?

MR. ANDREWS: That is my motion, your Honor, but if your Honor is considering entertaining favorably that motion, I would ask your Honor to reserve decision on it for the time being.

THE COURT: If I am going to do what?

MR. ANDREWS: If your are considering entertaining that motion with respect to Mr. Wax and Mr. Levine, I would ask your Honor to reserve decision for the time being.

THE COURT: I am trying to clarify the record as

bme 23

to where we are. You got up and made a long statement and is your statement in the form of a motion for a mistrial?

MR. ANDREWS: Yes.

THE COURT: That motion is denied, because it tests whether whatever it is Mr. Wohl did, and we have gone over it, was so prejudicial as to deny Mr. Levine a fair trial and the Court rules that it was not.

Moreover, it appears that the documents came in without limitation to Stern-Haskell.

We are going to recess now for lunch. The jurors have had their lunch order in.

MR. WOHL: Your Honor, there is one thing I think I should bring to your attention. It is not particularly pleasant for me to do it, but I think I should, and that is, I think that my argument concerning the testimony of Miss Dundish was accurate and that Mr. Andrews was inaccurate.

On the Rabbi Schuchalter, however, on re-reading the transcript, I think that in my argument I inaccurately characterized his testimony. I didn't do it consciously. Before I prepared my rebuttal we had basically divided up testimony portions to be re-read and I asked somebody else to read that and confirm my recollection, that he had said that, and somewhere a communication broke down and I was

bme 24

under the impression that he had testified, as I represented it in my rebuttal.

THE COURT: With respect to that, Mr. Andrews did make other points regarding the testimony of Miss Dundish and the testimony of Schuchalter.

Again, those matters fall in the category of recollection of the facts and if you are making a motion for mistrial based on that misrecollection, Mr. Andrews, that motion would have to be denied.

MR. ANDREWS: Your Honor, may I have an opportunity to make a further observation? I would request that sometime during the course of this day while we are waiting for the jury that your Honor conduct an evidentiary hearing to determine whether or not what was done by the Government with respect to the exhibits was fair.

You cannot extract from that cold record what happened way back at the beginning of March that admitted that book into evidence. I request an evidentiary hearing so we can preserve for the Court of Review, if we ever get there, just exactly what happened and exactly the way the Government conducted this whole transaction.

THE COURT: We have gone over that.

MR. ANDREWS: I would like to put the Government under oath and get under oath myself, and I would like an

bme 25

opportunity to cross examine the U. S. Attorneys on that point, just to show the Court of Appeals what they are doing in these trial courts.

THE COURT: I am not going to entertain any such suggestion as that, as to what the U. S. Attorneys are doing in these trial courts.

I have told you about the broad sides against federal officials, and if you have something specific, we will hear it.

MR. ANDREWS: I think this Court has been misrepresented to, I think the goodwill of counsel has been taken advantage of and I would like to get these people under oath so I can back up what I am saying with sworn testimony.

THE COURT: Well, we started on this at least 50 minutes ago and we have not hastily gone over it. We spent 50 minutes on your suggestion that Mr. Wohl had agreed to limit the admissibility of this and I don't find any evidence of that. He denies it, and you assert it, and that is all it would be if we had a hearing here. We have gone over this, everybody spent time on it, we dug it out of the record and I have ruled on it and we are going to lunch now and after lunch, we will take up anybody else's comments on Mr. Wohl's summation.

bme 26

MR. ROBSON: May I just for the record join in the motion for withdrawal of a juror and I join in Mr. Andrews' request and for the record state that in my opinion Miss Harris is as grossly and wilfully misrepresented to this Court what she said and what her intentions were and I would like to have an opportunity to have her sworn and submitted to cross examination. I believe she has misrepresented to this Court, has violated her obligation as an officer of the United States and an officer of the Court and I believe that it is in an area which is of significant damage to all of the defendants in this case.

THE COURT: We will recess until 2:15 for lunch.

(Luncheon recess. Time noted: 1:05 p.m.)